

COPY

ORIGINAL  
FILED

MAR 19 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 BART M. BOTTA, SBN 167051  
 2 MARION I. QUESENBERRY, SBN 072308  
 3 RYNN & JANOWSKY, LLP  
 4 4100 Newport Place Drive, Suite 700  
 5 Newport Beach, CA 92660  
 6 Telephone: (949) 752-2911  
 7 Facsimile: (949) 752-0953

E-filing

8 Attorneys for Plaintiff  
 9 REY REY PRODUCE SFO, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VRW

SAN FRANCISCO DIVISION

CV 08

1518

11 REY REY PRODUCE SFO, INC., a  
 12 California Corporation,  
 13

CASE NO.

Plaintiff,

v.

14 **MEMORANDUM OF POINTS**  
 15 **AND AUTHORITIES IN**  
 16 **SUPPORT OF PLAINTIFF' EX**  
 17 **PARTE APPLICATION FOR**  
 18 **TEMPORARY RESTRAINING**  
 19 **ORDER OR, ALTERNATIVELY,**  
 20 **FOR PRELIMINARY**  
 21 **INJUNCTION; IN SUPPORT**  
 22 **THEREOF**

18 MIS AMIGOS MEAT MARKET,  
 19 INC., a California Corporation; URIEL  
 20 GONZALEZ, an individual;  
 21 ALEJANDRO COSTA, an individual,

Defendants.

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

## TABLE OF CONTENTS

I.	PRELIMINARY STATEMENT .....	1
II.	ALL REQUIREMENTS FOR ESTABLISHING A PACA TRUST HAVE BEEN SATISFIED IN THE CASE AT BAR .....	3
A.	The PACA Amendment Establishes A Trust For The Benefit Of The PACA Beneficiary .....	3
B.	There Is No Tracing Requirement For The PACA Trust.....	4
C.	Defendants are “Dealers” As Defined by the Perishable Agricultural Commodities Act .....	7
D.	The Produce Sold By Plaintiff Moved In And/Or In Contemplation of Interstate or Foreign Commerce.....	8
E.	Plaintiff Perfected Its Right To PACA Trust Benefits By Issuing Invoices Contain All Language Necessary to Preserve Plaintiff PACA Trust Rights in Compliance with 7 U.S.C. §499e(c)(4) .....	9
F.	Defendants Failed to Establish A PACA Trust for the Protection of PACA Beneficiaries .....	10
G.	All Of The Threshold Prerequisites To The PACA Beneficiary’s Right To Recovery Under The PACA Amendment Have Been Established .....	11
III.	THE TRUST CLAIM OF THE PACA BENEFICIARY IS SUPERIOR TO AND TAKES PRIORITY OVER ALL OTHER SECURED OR UNSECURED CLAIMS AGAINST DEFENDANTS .....	12
IV.	PLAINTIFF WILL SUFFER IRREPARABLE INJURY ABSENT THE ISSUANCE OF INJUNCTIVE RELIEF BY THIS COURT....	13
V.	NO BOND SHOULD BE REQUIRED TO GRANT PRELIMINARY RELIEF.....	18

VI.	THE PACA TRUST BENEFICIARY IS ENTITLED TO RECOVER ATTORNEY'S FEES AND COSTS EXPENDED TO RECOVER AMOUNTS DUE AS WELL AS PREJUDGMENT AND POSTJUDGMENT INTEREST PURSUANT TO THE PROVISIONS OF THE PACA TRUST .....	19
VII.	CONCLUSION.....	20

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

**Cases****Page**

1	California ex rel. Van De Camp v. Tahoe Regional	
2	Planning Agency, 766 F.2d 1319, 1324-25	
3	as amended, 755 F.2d 998 (9th Cir. 1985) .....	18
4		
5	Continental Fruit Co. v. Gatziolis & Co.,	
6	774 F.Supp. 453 (N.D. Ill. 1991) .....	15
7	Continental Sales Co. v. Billings,	
8	No. 4-93-2763 (S.D. Tex. Mar. 6, 1996) .....	19
9	C.H. Robinson Company v. Alanco Corp.,	
10	239 F.3d 483 (2nd Cir. 2001) .....	13
11	DeBruyn Produce, Co. v. Olympic Produce Co.,	
12	734 F.Supp. 483, 485-86 (N.D.Ga. 1989) .....	15
13	Dollar-Rent-a-Car of Washington v. Travelers Indemnity,	
14	774 F.2d 1371, 1374 (9th Cir. 1985) .....	13
15	Fillipo v. S. Bonaccurso & Sons, Inc.,	
16	466 F.Supp. 1008, 1016 (E.D. Pa 1978) .....	10
17	Finest Fruits, Inc. v. Edward Boker, Inc.,	
18	86 Civ. 3903 (S.D.N.Y. 1986) .....	19
19	First State Bank v. Gotham Provision Co.,	
20	(In re Gotham Provision Co.)	
21	699 F.2d 1000, 1010 (5th Cir. 1982) .....	5
22	Frio Ice, S.A. v. Sunfruit, Inc.,	
23	918 F.2d 154 (11th Cir. 1990) .....	2
24	Gullo Produce Company, Inc., et al. v. A.C. Jordan	
25	Produce Co., Inc.,	
26	751 F.Supp. 64, 67 (W.D. Pa. 1990) .....	2, 15
27	Hendrick v. S. Bonaccurso & Sons, Inc.,	
28	466 F.Supp. 1025 (E.D. Pa 1978) .....	11

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1	In re Annde Foods, Inc.,	
2	110 B.R. 346 (Bankr. N.D. Ill., 1989) .....	17
3	In re Atlantic Tropical Market Corporation,	
4	118 B.R. 139 (Bankr. S.D. Fla. 1990) .....	6
5	In re Fresh Approach,[Fresh Approach II]	
6	51 B.R. 412, 420-422, 424-428	
7	(Bankr. N.D. Texas 1985).....	4, 6
8	In re Hancock-Nelson Mercantile, Inc.,	
9	95 B.R. 982 (Bankr. N.D. Minn. 1989) .....	5
10	In re Harper,	
11	150 Bankr. Rptr. 416 (E.D. Tenn. 1993) .....	11
12	In re Kornblum & Co., Inc.,	
13	81 F.3d 280 (2nd Cir. N.Y. 1996).....	5
14	In re Milton Poulos, Inc.,	
15	947 F.2d 1351 (9th Cir. 1991) .....	13, 19
16	In re Monterey House, Inc.,	
17	71 B.R. 244, 247, 249	
18	(Bankr. S.D. Texas 1986) .....	5, 13, 19
19	In re Nagelberg & Co., Inc.,	
20	84 B.R. 19 (Bankr. S.D. NY 1988).....	10
21	In re Prange Foods Corp.,	
22	63 B.R. 211 (Bankr. W.D. Mich. 1986) .....	13
23	In re W.L. Bradley Company, Inc.,	
24	75 B.R. 505 (E.D. Pa. 1987).....	5, 19
25	J.R. Brooks & Son, Inc. v. Norman's Country	
26	Market, Inc., 98 B.R. 47, 49-51	
27	Bankr. N.D. Fla. 1989) .....	2, 9, 18
28		

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1	Mid-Valley Produce Corp. v. 4-XXX Produce Corp.,	
2	819 F. Supp. 209 (E.D.N.Y. 1993).....	11
3	Middle Mountain Land and Produce, Inc. v.	
4	Sound Commodities, Inc., 307 F.3d 1220	
5	(9 <sup>th</sup> Cir. 2002).....	20
6	Morris Okun, Inc. v. Harry Zimmerman, Inc.,	
7	814 F. Supp. 346 (S.D.N.Y. 1993) .....	11
8	Sanzone-Palmisano Company v. M. Seaman Enterprises, Inc.,	
9	986 F.2d 1010 (6th Cir. 1993).....	6
10	Sundor Brands, Inc. v. Borden, Inc.,	
11	653 F.Supp. 86, 93 (M.D. Fla. 1986).....	18
12	Sunkist Growers, Inc. v. Fisher,	
13	104 F.3d 280 (9th Cir. 1997) .....	11
14	Tanimura And Antle, Inc. v. Packed Fresh, Inc.	
15	222 F.3d 132, 140-141 (3d Cir. 2000) .....	2, 14
16	Wayne Chemical, Inc. v. Columbus Agency Serv. Corp.,	
17	567 F.2d 692, 701 (7th Cir. 1977) .....	18
18		
19	<u>Statutes</u>	
20	Packers and Stockyards Act, 1921	
21	7 U.S.C. §181 et seq. ....	5
22	Perishable Agricultural Commodities Act of 1930,	
23	as Amended in 1984	
24	7 U.S.C. §499a.....	1
25	Perishable Agricultural Commodities Act	
26	7 U.S.C. §499a(6) .....	7, 8
27	Perishable Agricultural Commodities Act	
28	7 U.S.C. §499e.....	1

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1	Perishable Agricultural Commodities Act	
2	7 U.S.C. §499e(a) .....	7
3		
4	Perishable Agricultural Commodities Act	
5	7 U.S.C. §499e(c) .....	8
6	Perishable Agricultural Commodities Act	
7	7 U.S.C. §499e(c)(1) (Supp. 1986).....	4, 12
8	Perishable Agricultural Commodities Act	
9	7 U.S.C. §499e(c)(2) (Supp. 1986).....	4, 10
10	Perishable Agricultural Commodities Act	
11	7 U.S.C. §499e(c)(4).....	1, 9
12	Perishable Agricultural Commodities Act	
13	7 U.S.C. §499e(c)(5).....	3
14	Perishable Agricultural Commodities Act of 1930,	
15	Amendments H.R. No. 98-543 (1984) .....	16
16	<u>Regulations</u>	
17	7 C.F.R. §46.2 (m) .....	7
18	7 C.F.R. §46.2 (x).....	7
19	7 C.F.R. §46.46 (b)(2) .....	10
20		
21	<u>Rules</u>	
22	Federal Rule of Civil Procedure 65(b).....	14
23	Federal Rule of Civil Procedure 65(c) .....	18
24		
25		
26		
27		
28		

1	<u>Articles</u>	
2	Rynn, Injunctive Relief Under the 1984 Trust Amendment	
3	to the Perishable Agricultural Commodities Act:	
4	A Necessary Means of Trust Enforcement	
5	23 U.C. Davis L.Rev. 3 (Spring 1990) .....	3
6	Botta, Personal Liability for Corporate Debts: The	
7	Reach of the Perishable Agricultural Commodities	
8	Continues to Expand	
9	2 Drake J.AG.Law 339 (Winter 1997) .....	11

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### PRELIMINARY STATEMENT

This case arises out of the Perishable Agricultural Commodities Act of 1930, as amended in 1984, 7 U.S.C. §499a, et seq. ("PACA" or "Act"), and the PACA Trust provisions set forth at 7 U.S.C. §499e, et seq.

Plaintiff REY REY SFO, INC., (referred to herein as "Plaintiff" or "RRSFO"), operates as a seller of perishable agricultural commodities and is the beneficiary of a statutory trust provided for by the PACA.

Under the terms of the statutory trust, Defendants MIS AMIGOS MEAT MARKET, INC. ("MAMM"), a corporation; URIEL GONZALEZ ("UG"), an individual; and ALEJANDRO COSTA ("AC"), an individual, are statutory trustees who must hold in trust for Plaintiff all inventories of food or other products derived from perishable produce, including any receivables or proceeds from the sale thereof, until Plaintiffs' PACA trust claims are fully paid. Defendants URIEL GONZALEZ ("UG") and ALEJANDRO COSTA ("AC"), are sometimes referred to as "the Individual Defendants." MAMM and The Individual Defendants are sometimes collectively referred to herein as "Defendants."

Plaintiff's PACA trust claim has priority over all other secured and unsecured claims against Defendants. By virtue of 7 U.S.C. §499e(c)(4), U.S. District Courts are vested with original jurisdiction to hear actions brought by PACA trust beneficiaries to enforce payment from the trust.

In a series of transactions, occurring at the dates and in the amounts alleged in the First Cause of Action of Plaintiff's complaint, Plaintiff sold and shipped perishable agricultural commodities to Defendants in accordance with Defendants' instructions and at agreed-upon selling prices.

All commodities sold as described above were shipped in or in contemplation of, interstate and foreign commerce and were accepted by

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 Defendants. Despite accepting all the commodities and despite reselling those  
 2 commodities to their own customers, Defendants failed to pay for the commodities.  
 3 Not only have Defendants admitted that the sums due as alleged herein remain  
 4 payable to Plaintiff, but Defendants have failed and refused to fully and timely pay  
 5 for the commodities despite repeated promises to make such payments and have  
 6 dissipated the PACA trust assets rightfully belonging to Plaintiff.

7 Therefore, Plaintiff now seeks a Temporary Restraining Order or,  
 8 alternatively, a Preliminary Injunction which would, in relevant part, (a) prevent  
 9 Defendants from further dissipating the trust assets, and (b) requires Defendants to  
 10 release or otherwise set aside the amounts owed to Plaintiff pending final  
 11 adjudication of the complaint on file herein.

12 The issues to be decided by this Court upon Plaintiffs' application are as  
 13 follows:

- 14 1. Whether Plaintiff qualifies as a PACA trust beneficiary;
- 15 2. Whether Defendants dissipated or are dissipating PACA trust  
 16 assets including, but not limited to, inventory of perishable  
 17 agricultural commodities, proceeds from the sale of such  
 18 commodities and Defendants' accounts receivable; and,
- 19 3. Whether Defendants must immediately set aside and turn over  
 20 to Plaintiff, PACA trust assets in amounts sufficient to satisfy  
 21 Plaintiff's PACA trust claim as alleged herein.

22 A Temporary Restraining Order is an appropriate vehicle for protecting a  
 23 PACA trust beneficiary's rights. *Tanimura and Antle, Inc., et al. v. Packed Fresh,*  
 24 *Inc., et. al.*, 222 F.3d 132, 140-141 (3d Cir. 2000); *Gullo Produce Company, Inc.,*  
 25 *et al. v. A.C. Jordan Produce Co., Inc.*, 751 F.Supp. 64 (W.D. Pa. 1990); *Frio Ice,*  
 26 *S.A. v. Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990); *J.R. Brooks & Son, Inc. v.*  
 27 *Norman's Country Market, Inc.*, 98 B.R. 47 (Bankr. N.D. Fla. 1989); Patricia J.  
 28 Rynn, *Injunctive Relief Under The 1984 Trust Amendments to The Perishable*

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 *Agricultural Commodities Act: A Necessary Means of Trust Enforcement*, 23 U.C.  
 2 Davis L.Rev. 3 (Spring 1990).

3 The district courts of the United States are vested with jurisdiction  
 4 specifically to entertain actions by PACA trust beneficiaries to enforce payment  
 5 from the trust. 7 U.S.C. §499e(c)(5). Accordingly, it is properly within this  
 6 Court's discretion to grant Plaintiff's requested injunctive relief. By way of  
 7 example, the attached injunction orders obtained from various U.S. District Courts  
 8 are substantially identical to the requested order herein and are based upon produce  
 9 creditors seeking enforcement of their PACA trust rights. See Orders to Show  
 10 Cause, true and correct copies of which are attached hereto and incorporated herein  
 11 by reference as **Group Exhibit 1**.

## 12 II.

### 13 ALL REQUIREMENTS FOR ESTABLISHING A PACA TRUST HAVE 14 BEEN SATISFIED IN THE CASE AT BAR

#### 15 A. The PACA Amendment Establishes A Trust For The Benefit Of 16 The PACA Beneficiary

17 The PACA Amendment provides that the PACA Trust is created by  
 18 operation of law upon the delivery of perishable agricultural commodities. In  
 19 enacting the PACA Amendment, Congress recognized the importance of  
 20 protecting the seller's perishable agricultural commodities. In particular, the  
 21 PACA Amendment states, as follows:  
 22

23  
 24 It is hereby found that a burden on commerce in perishable  
 25 agricultural commodities is caused by financing arrangements  
 26 under which...dealers...who have not made payment for  
 27 perishable agricultural commodities purchased, contracted to be  
 28 purchased, or otherwise handled by them on behalf of another  
 person, encumber or give lenders a security interest in, such  
 commodities, or on inventories of food or other products  
 derived from such commodities, and any receivables or

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest. 7 U.S.C. §499e(c)(1) (Supp. 1986). (Emphasis added).

Therefore, upon the buyer's receipt of the produce, the PACA Amendment creates a PACA Trust in favor of the unpaid seller on all perishable agricultural commodities, all inventories of food or other products derived from perishable agricultural commodities as well as any receivables or proceeds from the sale of such commodities or products. 7 U.S.C. §499e(c)(2) (Supp. 1986). Specifically, the PACA Amendment provides, as follows:

Perishable agricultural commodities received by a...dealer...in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such...dealer...in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. 7 U.S.C. §499e(c)(2) (Supp. 1986).

Accordingly, as soon as Defendants herein received the produce sold by Plaintiff, the PACA Trust was created by operation of law.

#### **B. There Is No Tracing Requirement For The PACA Trust**

The PACA Amendment does not require tracing and therefore trust assets are to be preserved as a non-segregated "floating trust." In addition, the amendment acknowledges that commingling is contemplated. If a dispute arises regarding the identification of the trust assets, the debtor has the burden to establish what, if any, assets are not subject to the PACA Trust. *See, In re Fresh Approach*, 51 B.R. 412, 422 (Bankr. N.D. Texas 1985) [*"Fresh Approach II"*], a seminal judicial decision analyzing the impact of the statutory trust provisions.

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 In accordance with legislative directives, the court in *Fresh Approach II*  
 2 based its decision upon the Packers and Stockyards Act, 1921 [7 U.S.C. §181, et  
 3 seq.] (hereinafter "PSA"), and its subsequent line of cases, concluding that the trust  
 4 created by the PACA was intended to be a "floating non-segregated statutory  
 5 trust," to which claimants need not trace funds. See, *In re Monterey House*, 71  
 6 B.R. 244, 247 (Bankr. S.D. Texas 1986). Furthermore, the court in *First State*  
 7 *Bank v. Gotham Provision Co. (In re Gotham Provision Co.)*, 699 F.2d 1000, 1011  
 8 (5th Cir. 1982) (hereinafter "*Gotham*"), in holding that the PSA established a  
 9 floating trust, stated:

10 [W]here trust funds are commingled with funds not subject to  
 11 the trust, a lien on the entire commingled fund exists for the  
 12 benefit of the beneficiaries of the trust.

13 The *Gotham* court further held that when commingling occurs, the only  
 14 burden on the unpaid cash sellers is to prove the balance due to them and the  
 15 existence of a floating pool of commingled inventories of livestock products,  
 16 accounts receivable and proceeds derived from cash and credit sales. *Id.* The  
 17 court in *Gotham*, however, clearly placed the burden on the bankruptcy trustee  
 18 (and the lending institution) to show that the receivables were not subject to the  
 19 PACA trust. *Id.* at 1012. *In re Hancock-Nelson Mercantile, Inc.*, 95 B.R. 982  
 20 (Bankr. N.D. Minn. 1989); *In re W.L. Bradley Company, Inc.*, 75 B.R. 505 (E.D.  
 21 Pa. 1987).

22 *In re Kornblum & Co., Inc.*, 81 F.3d 280 (2nd Cir.N.Y. 1996) is particularly  
 23 instructive because of its analysis of the issue of what property makes up the  
 24 corpus of the PACA Trust. The *Kornblum* court rejected the debtor's contention  
 25 that the only assets that are held in trust for a particular PACA beneficiary are the  
 26 specific produce or proceeds supplied by that beneficiary. The court accepted the  
 27 beneficiaries' argument that the res of the PACA Trust is not so limited and that "a  
 28 single PACA trust exists for the benefit of all of the sellers to a Produce Debtor,

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953



1 and continues in existence until all of the outstanding beneficiaries have been paid  
2 in full.”

3 The *Kornblum* court set forth a three-prong test for analyzing whether  
4 specific property is part of the PACA Trust. In order to prove that the property is  
5 not part of the PACA Trust, the debtor has the burden to establish either that (1) no  
6 PACA trust existed when the specific property was purchased; (2) even though a  
7 PACA Trust existed at that time, the property was not purchased with trust assets;  
8 or (3) although a PACA Trust existed when the property was purchased and the  
9 property was purchased with trust assets, the debtor thereafter paid all unpaid  
10 sellers in full prior to the transactions involving the creditors, thereby terminating  
11 the trust.

12 Moreover, in *In re Atlantic Tropical Market Corporation*, 118 B.R. 139  
13 (Bankr. S.D. Fla. 1990), the court held that the PACA trust fund is established  
14 upon the commencement of the purchaser’s produce related business. The court  
15 held that any business assets purchased by one who is in the business of buying  
16 and selling produce will be presumed to have been purchased with PACA trust  
17 assets, and any such assets may thus be viewed as collateral until the PACA trust  
18 claim has been paid in full. *See also, Sanzone-Palmisano Company v. M. Seaman*  
19 *Enterprises, Inc.*, 986 F.2d 1010 (6th Cir. 1993).

20 Accordingly, the PACA beneficiary is not required to trace trust funds. To  
21 the extent any dispute arises regarding the trust assets, it is the Debtor who must  
22 prove which assets, if any, are not subject to the trust. *In re Fresh Approach, supra*.

23 Defendants are required by federal statute to hold all perishable agricultural  
24 commodities, the inventories of food or other products derived from the perishable  
25 agricultural commodities and the receivables and proceeds from the sale of the  
26 perishable agricultural commodities in trust for the PACA beneficiaries. In the  
27 event these liquid and intangible assets are insufficient to fully satisfy Plaintiff’s  
28 trust claims, Plaintiff may look to other assets of Defendants for security of its trust

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 claims. Defendants herein have failed or otherwise refused to perform their  
 2 statutory duties and Plaintiff is therefore entitled to injunctive relief, which will  
 3 require Defendants to set aside sufficient assets to fully satisfy their statutory trust  
 4 obligations and which will restrain Defendants from any dissipation of the assets  
 5 required to be held in trust.

6 **C. Defendants are "Dealers" As Defined by the Perishable**  
 7 **Agricultural Commodities Act.**

8 Defendants are "dealers" under the PACA and are, therefore, subject to the  
 9 PACA Trust Amendment. 7 U.S.C. §499e(a) and (c)(2). Specifically, the PACA  
 10 Amendment and its regulations defines "dealer" as follows:

11 "Dealer" means any person engaged in the business of  
 12 buying or selling in wholesale or jobbing quantities in  
 13 commerce . . . :

14 7 U.S.C. §499a(6)

15 "Wholesale or jobbing" quantities is defined in the PACA regulations (7  
 16 C.F.R. §46.2(x)) as 2,000 pounds in any given day, either shipped, received, or  
 17 contracted to be received. As demonstrated in the declaration of Manuel Reynoso,  
 18 Defendants have purchased quantities in excess of 2,000 pounds in one day from  
 19 Plaintiff alone.

20 In addition to purchasing the required quantity in any given day, in order to  
 21 be a "dealer" under the PACA and required to obtain a PACA license, an entity  
 22 must purchase at least \$230,000.00 worth of produce in any calendar year. See 7  
 23 C.F.R. §46.2(m) which states:

24 "'Dealer" means any person engaged in the business of  
 25 buying and selling in wholesale or jobbing quantities in  
 26 commerce and includes:

27 (1) Jobbers, distributors, and other wholesalers;

28 (2) Retailers, when the invoice cost of all produce exceeds  
 \$230,000.00 during a calendar year. . ."

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

As demonstrated by the declaration of Manuel Reynoso, Defendants purchased \$909,028.61 worth of produce from Plaintiff alone between February 2006 and December 2007, and in the calendar year of 2007, Defendants purchased a combined total of \$428,443.61 worth of produce from Plaintiff alone.

Defendants are therefore unquestionably subject to PACA and are therefore subject to all PACA rules and regulations.

**D. The Produce Sold By Plaintiff Moved In And/Or In Contemplation Of Interstate Or Foreign Commerce**

To qualify for protection under the PACA, the perishable agricultural commodities must have been bought or sold in the course of or in contemplation of foreign interstate commerce. 7 U.S.C. §499a(6). The produce that was sold to Defendants clearly moved in the stream of "interstate commerce" as that term has been defined by the case law.

For example, *Fresh Approach II* discussed "interstate commerce" and held that interstate commerce is established where the debtor purchases produce from both out-of-state vendors and in-state vendors who acquired produce from out-of-state sources. See *Fresh Approach II*, 51 B.R. at 424-28. *Id.* at 425. Specifically, the court stated:

In the case at bar, Debtor was one of the intermediaries in the stream of commerce flowing from the producers in various states to the consumers in Dallas, Texas. While it is true that a segment of that stream was wholly within the state of Texas, i.e., from [the PACA beneficiary] to Debtor, it cannot reasonably be denied that all parties contemplated a transaction having the practical effect of providing access for Texas consumers to produce grown in other states. *Id.* at 426.

Further, one court specifically held that PACA trust protection also extends to intrastate transactions by any "commissioned merchants, dealer, or broker" as

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953



1 defined under the PACA. *J.R. Brooks & Son, Inc. v. Norman's Country Market,*  
 2 *Inc.*, 98 B.R. 47, 49-50 (Bankr. N.D. Fla. 1989).

3 The declaration of Plaintiff's representative filed in support hereof verify  
 4 that the produce sold in the subject transactions were sold in, and in contemplation  
 5 of, interstate commerce.

6 Accordingly, the transactions at issue are within the scope of PACA and its  
 7 statutory trust provisions.

8  
 9 **E. Plaintiff Perfected Its Right To PACA Trust Benefits By Issuing**  
 10 **Invoices That Contain All Language Necessary To Preserve**  
 11 **Plaintiff's PACA Trust Rights in Compliance with 7 U.S.C.**  
 12 **§499e(c)(4)**

13 Plaintiff is and during all times herein were a PACA licensee. See  
 14 Declarations of Plaintiff's representatives filed simultaneously herewith. Pursuant  
 15 to the 1995 Amendments to the Act, PACA licensees, such as Plaintiff herein, may  
 16 preserve PACA trust rights by using ordinary and usual invoice statements to  
 17 provide notice of the licensees' intent to preserve its trust benefits. 7 U.S.C.  
 18 §499e(c)(4). Thus, under the terms of the 1995 PACA Amendments, a licensee  
 19 who includes the following statement on the face of its invoices will have perfected  
 20 its PACA trust rights:

21 "The perishable agricultural commodities listed on this  
 22 invoice are sold subject to the statutory trust authorized by  
 23 section 5(c) of the Perishable Agricultural Commodities Act,  
 24 1930 (7 U.S.C. §499e(c)). The seller of these commodities  
 25 retains a trust claim over these commodities, all inventories  
 26 of food or other products derived from these commodities,  
 27 and any receivables or proceeds from the sale of these  
 28 commodities until full payment is received." 7 U.S.C.  
 §499e(c)(4).

As is self-evident from the copies of Plaintiff's invoices for the subject  
 transactions (attached as Exhibits to the Plaintiff's Declaration) all of the unpaid

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 invoices included the above-quoted language, verbatim, on their face.  
 2 Consequently, Plaintiff qualifies as a trust beneficiary under the PACA for all  
 3 transactions which are the subject of those invoices. Therefore, this threshold  
 4 requirement of the PACA Amendment has been satisfied.

5  
 6 **F. Defendants Failed To Establish A PACA Trust For The**  
 7 **Protection of the PACA Beneficiaries**

8 Defendants were required by the PACA Amendment to hold:

9 [A]ll inventories of food or other products derived from  
 10 perishable agricultural commodities, and any receivables or  
 11 proceeds from the sale of such commodities or products...in  
 12 trust for the benefit of...[the PACA Beneficiary] until *full*  
 13 *payment* of the sums owing in connection with such  
 14 transactions has been received by...[the PACA Beneficiary]. [7  
 15 U.S.C. §499e(c)(2).] (Emphasis added).

16 Defendants failed and refused, and continue to fail and refuse, to preserve  
 17 the PACA assets as required by the Act and by Defendants' actions and  
 18 admissions, have insufficient trust assets to pay the amounts protected under the  
 19 trust. See Declaration of Plaintiff's representatives filed simultaneously herewith.  
 20 As such, Defendants are in violation of 7 U.S.C. §499e et seq. *See, In re*  
 21 *Nagelberg & Co., Inc.*, 84 B.R. 19 (Bankr. S.D.N.Y. 1988), which confirms that  
 22 dissipation of PACA trust assets results from any act which could result in the  
 23 diversion of such assets or which could prejudice or impair the ability of unpaid  
 24 suppliers, sellers, or agents to recover money owed in connection with produce  
 25 transactions. See also, 7 C.F.R. §46.46 (b)(2).

26 Moreover, during all times herein, the Individual Defendants held positions  
 27 from where they could exercise control over the PACA trust assets which are the  
 28 subject of this action. As such, the Individual Defendants are individually liable  
 for M&C's failure to preserve the statutory trust assets. *See Fillipo v. S.*  
*Bonaccurso & Sons, Inc.*, 466 F.Supp. 1008, 1016 (E.D. Pa 1978); *Hendrick v. S.*

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 *Bonaccurso & Sons, Inc.*, 466 F.Supp. 1025 (E.D. Pa 1978); *Morris Okun, Inc. v.*  
 2 *Harry Zimmerman, Inc.*, 814 F. Supp. 346 (S.D.N.Y. 1993); *In re Harper*, 150  
 3 Bankr. Rptr. 416 (E.D. Tenn. 1993); *Mid-Valley Produce Corp. v. 4-XXX Produce*  
 4 *Corp.*, 819 F.Supp. 209 (E.D.N.Y. 1993). *See also Sunkist Growers, Inc. v. Fisher*,  
 5 104 F.3d 280 (9th Cir. 1997), which held that those in positions to control assets of  
 6 the PACA trust, and who have breached their fiduciary duty to preserve those  
 7 assets, may be held personally liable under the PACA. *See also, In re Harper*, 150  
 8 Bankr. Rptr. 416 (E.D. Tenn. 1993); and Bartholomew M. Botta, *Personal*  
 9 *Liability for Corporate Debts: The Reach of the Perishable Agricultural*  
 10 *Commodities Continues to Expand*, 2 DRAKE J.AG.LAW 339 (Winter 1997).

11  
 12 **G. All Of The Threshold Prerequisites To The PACA Beneficiary's**  
 13 **Right To Recovery Under The PACA Amendment Have Been**  
 14 **Established**

15 Plaintiff has established that it is entitled to enforce its trust claim against  
 16 Defendants for the perishable agricultural commodities sold to Defendants.  
 17 Specifically, the evidence shows that Plaintiff established:

- 18 1. The PACA Amendment creates a trust for the benefit of the  
 19 PACA Beneficiary;
- 20 2. There is no tracing requirement for the PACA Trust;
- 21 3. Defendants are dealers and statutory trustees under the  
 22 PACA;
- 23 4. The perishable agricultural commodities sold by the PACA  
 24 Beneficiary moved in the course of or in contemplation of  
 25 foreign and interstate commerce;
- 26 5. Plaintiff perfected its right to the trust assets by including the  
 27 statutory trust language on its invoices and thus has a valid  
 28 PACA trust claim against Defendants in the principal amount  
 of at least \$88,753.30.

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

6. Defendants failed to maintain the PACA trust assets sufficient to protect Plaintiff, and dissipated and will be dissipating trust assets absent injunctive relief; and,

7. The Individual Defendants were officers, directors and/or shareholders of MAMM. who were in positions to control the PACA trust assets that are the subject of this action, and by breaching their fiduciary duty to the PACA beneficiary, are personally liable for the unpaid PACA trust claim.

Accordingly, this Court should find that Defendants were and are obligated to promptly pay Plaintiff the principal amount of at least \$88,753.30, plus recoverable attorney's fees and costs in the amount of \$4,120.00 and finance charges totaling \$3,966.22, all of which is protected under the provision of the PACA trust, as detailed in the Ex Parte Application.

### III.

#### **THE TRUST CLAIM OF THE PACA BENEFICIARY IS SUPERIOR TO AND TAKES PRIORITY OVER ALL OTHER SECURED OR UNSECURED CLAIMS AGAINST DEFENDANTS**

The unambiguous wording of the PACA Amendment compels this Court to give Plaintiff's trust claims priority over all other secured or unsecured claims against Defendants. Legislative history concerning the PACA amendment makes it clear that it is intended to protect sellers of perishable agricultural commodities. The agriculture industry is unique because of the short life span of agriculture products. Thus, Congress recognized that the industry itself must be protected and therefore, through PACA, granted priority status to sellers of produce over other lenders who take liens on accounts, inventory and the proceeds thereof. [7 U.S.C. §499e(c)(1)] (Supp. 1986).

In addition to the amendment itself, judicial decisions consistently affirm that a PACA Trust Beneficiary's trust claim has priority over other secured and

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

unsecured claims. *See, In re Monterey House, Inc., supra*, at 249; *accord, In re Milton Poulos, Inc.*, 947 F.2d 1351 (9th Cir. 1991); *See also, In re Prange Foods Corp.*, 63 B.R. 211 (Bankr. W.D. Mich. 1986). For example, *In Fresh Approach II, supra*, at p. 420-422, the court describes the priority of the PACA claimant's interest by holding:

It is clear from the terms of the PACA Amendments and the supporting legislative history that Congress intended to create a priority status for unpaid claimants, priming even the administrative claims which normally stand first in line in a bankruptcy distribution. To approve a plan which grants anything but such a priority would be in direct contravention of the purpose and intent of the PACA amendments. (Emphasis in original). 51 B.R. at 420.

*See also, C.H. Robinson Company v. Alanco Corp.*, 239 F.3d 483 (2nd Cir. 2001) which held:

Allowing a ... PACA trustee to pay any other creditors with, PACA funds before the Seller is paid in full would frustrate [PACA's] purpose, and would be contrary to the language of PACA and its accompanying regulations. **PACA trust beneficiaries are entitled to full payment before trustees may lawfully use trust funds to pay any other creditors.** *Id.* at 488 (Emphasis added.)

Based upon the foregoing authorities, the PACA trust beneficiary unquestionably enjoy a priority status over all other creditors of Defendants, including secured creditors.

#### IV.

### **PLAINTIFF WILL SUFFER IRREPARABLE INJURY ABSENT THE ISSUANCE OF INJUNCTIVE RELIEF BY THIS COURT**

The traditional elements for injunctive relief are: (a) irreparable harm; (b) probable success on the merits; (c) harm to the Plaintiff which outweighs the harm to the opposing party; and, (d) whether the public interest will be served by granting the proposed relief. *Dollar-Rent-a-Car of Washington v. Travelers*

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953



1 *Indemnity*, 774 F.2d 1371, 1374 (9th Cir. 1985). See also Federal Rules of Civil  
2 Procedure Rule 65(b).

3 These elements are satisfied where sellers of perishable agricultural produce  
4 are not paid by the buyer for such produce and the seller demonstrates: (1)  
5 dissipation of the PACA trust assets; and (2) the buyer's general financial  
6 instability. *Tanimura and Antle, Inc., et al. v. Packed Fresh, Inc., et. al.*, 222 F.3d  
7 132, 140-141 (3d Cir. 2000).

8 Because PACA is remedial legislation, it must be construed broadly to  
9 effectuate its purpose of ensuring payment to unpaid produce sellers who qualify  
10 as PACA trust beneficiaries. Therefore, PACA trust dissipation constitutes  
11 irreparable harm and will satisfy the irreparable harm requirement for preliminary  
12 injunctive relief, especially where Plaintiffs submit evidence that the trust is being  
13 depleted and payment is not readily forthcoming or available. *Tanimura and*  
14 *Antle, Inc., et al. v. Packed Fresh Produce, Inc., et al.*, 222 F.3d at 140-141.

15 In the *Tanimura and Antle, Inc., et al v. Packed Fresh Produce, et al.* case,  
16 Plaintiff sought a Temporary Restraining Order to, among other things, prevent  
17 further dissipation of the PACA trust assets. After hearing, the District Court  
18 denied injunctive relief because (1) it believed the Plaintiffs had an adequate  
19 remedy at law; and (2) it believed injunctive relief to be futile when the PACA  
20 trust assets were already depleted. *Id.* at 134.

21 On appeal, the District Court's denial of injunctive relief was reversed. In  
22 concluding that injunctive relief should have been granted, the Court of Appeal  
23 explained:

24 [W]e conclude that an adequate remedy at law does not exist,  
25 and that injunctive relief to prevent dissipation of PACA trust  
26 assets may issue, when it is shown that the trust is being  
27 depleted and the likelihood is great that there will be no funds  
28 available to satisfy a legal judgment against the delinquent  
buyer. *Id.* at 139.

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 With specific reference to the irreparable harm requirement, the Court noted  
 2 that Plaintiffs in the Packed Fresh Produce case suffered irreparable injury as soon  
 3 as the trust was depleted and payment was not readily forthcoming or available.  
 4 *Id.* at 140-141.

5 Numerous federal courts across the country have held that PACA trust  
 6 dissipation satisfies the irreparable harm requirement for injunctive relief if, absent  
 7 such relief, ultimate recovery is rendered unlikely. For example, *See Continental*  
 8 *Fruit Co. v. Gatzolis & Co.*, 74 F.Supp. 453 (N.D. Ill. 1991) (finding irreparable  
 9 harm because, absent injunctive action, potential trust dissipation would  
 10 contravene PACA and permanently injure the trust beneficiary when the trustee  
 11 had limited assets); *Gullo Produce Co., v. A.C. Jordan Produce Co.*, 751 F.Supp.  
 12 64, 67 (W.D.Pa. 1990) (concluding that Plaintiffs “have suffered and will continue  
 13 to suffer immediate and irreparable harm if the Defendant is not restrained from  
 14 using or otherwise dissipating the trust assets” when the Defendant’s insolvency  
 15 precluded recovery); *DeBruyn Produce, Co. v. Olympic Produce Co.*, 734 F.Supp.  
 16 483, 485-86 (N.D.Ga. 1989) (granting injunctive relief in the form of a segregated  
 17 trust because the Plaintiffs, in light of the Defendant’s troublesome financial  
 18 situation, would suffer irreparable harm if unable to collect its receivables).

19 Plaintiff has submitted substantial evidence of dissipation of PACA trust  
 20 assets and Defendants’ general financial instability.<sup>1</sup> Specially, Plaintiff demanded  
 21 payment from Defendants on dozens of occasions via telephone calls in addition to  
 22 sending invoices requesting payment. Despite these efforts, payment has not been  
 23 received. Further Defendants admitted to Plaintiff that the money is due, but  
 24 nevertheless failed and refused to pay any portion of the debt despite repeated  
 25 promises to do so. Also, Defendants are on the process of selling their stores.

---

27 <sup>1</sup> Notably, the evidence submitted here is exactly the same sort of evidence submitted in  
 28 the *Packed Fresh Produce* matter and which the Court of Appeal deemed sufficient when  
 concluding that injunctive relief should issue.

1 For these reasons, adequate evidence exists to establish that Defendants  
2 dissipated PACA trust assets, failed to maintain trust assets in amounts sufficient to  
3 fully pay Plaintiff for the produce which is the subject of this dispute and are likely  
4 unable to fully repay the debt. On that basis alone, Plaintiff has adequately  
5 satisfied the irreparable harm requirement necessary for injunctive relief.

6 Finally, it should be noted that Congress, in establishing the trust over  
7 perishable agricultural commodities and their proceeds, recognized the risks and  
8 hardships inherent in being a grower and shipper of perishables and the irreparable  
9 harm which will result when an insolvent purchaser cannot pay the grower in a  
10 timely manner. Specifically, Congress has stated:

11 The process of growing, harvesting, packing and shipping  
12 perishables is a real gamble; costs are high, capital and  
13 returns are delayed until the crop is sold. If the grower-  
14 shipper cannot realize any returns on the sale of the crop  
15 when due, he may not be able to survive. Thus, where  
16 business failures or reorganizations occur on the part of  
17 buyers of their crop, the growers are usually the parties least  
18 able to withstand the losses and inevitable delays which  
19 result from such actions. [Perishable Agricultural  
20 Commodities Act of 1930, Amendments, H.R. No. 98-543  
21 (1984)].

22 Thus, Congress clearly acknowledged that when a supplier of perishable  
23 agricultural commodities is not paid by a purchaser, the supplier is exposed to  
24 irreparable harm to such a degree that the supplier may not even be able to survive.  
25 Accordingly, the PACA trust was created to remedy these potentially devastating  
26 risks to the suppliers by imposing a trust in favor of that supplier on the inventories  
27 of commodities and products derived therefrom and upon all proceeds of sales of  
28 such commodities and products in the hands of the commission merchant, dealer or  
broker. *Fresh Approach II*, 51 B.R. at 421.

The purpose of the PACA trust can only be accomplished if the corpus of  
the trust is maintained for the benefit of the unpaid supplier until full payment has

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953



1 been made for all commodities purchased. *In re Annde Foods, Inc.*, 110 B.R. 346  
 2 (Bankr. N.D. Ill., 1989). Therefore, unless the relief requested by Plaintiff is  
 3 issued to protect the trust rights of Plaintiff, there is the very real possibility that  
 4 Plaintiff's trust rights may effectively be eviscerated. Parenthetically, because  
 5 several months elapsed between when the TRO was first denied by the District  
 6 Court in the *Packed Fresh* case and when it was finally entered after appeal, the  
 7 PACA trust assets were dissipated and the PACA trust beneficiaries remain  
 8 unpaid. Plaintiff asks this Court, in the exercise of its sound discretion, to  
 9 minimize any prospects of such a repeat occurrence in the current case and to  
 10 immediately require Defendants to preserve trust assets in a manner that they are  
 11 guaranteed to be available to satisfy Plaintiff's trust claim.

12 For these reasons, Plaintiff will be irreparably harmed by the continued  
 13 dissipation of trust assets if Defendants are not restrained from spending, diverting  
 14 or distributing any funds before a hearing can be had on the merits of Plaintiff's  
 15 complaint. Moreover, Defendants must be compelled to establish a segregated  
 16 account into which trust funds must be placed in an amount sufficient to satisfy  
 17 Plaintiff's claims. In the event the Court is inclined to hear this matter after notice  
 18 despite the above, Plaintiff urge the court to set the hearing on an emergency basis  
 19 not to exceed 24 hours.

20 Plaintiff has established that their claim to the trust assets is prior in right to  
 21 all others. The trust interests of Plaintiff will be irreparably harmed if Defendants  
 22 remain free to divert trust assets to third parties and Plaintiff does not receive  
 23 payment. Further loss or dissipation of product proceeds or receivables held in  
 24 trust by Defendants can only be prevented if the Court requires Defendants to  
 25 segregate sufficient assets by depositing funds with the Court or in the alternative,  
 26 depositing sufficient funds in a separate, trust account to be established by counsel  
 27 herein.  
 28

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 Finally, success on the merits of this particular action is highly likely.  
 2 Defendants do not dispute that it has not paid Plaintiff for the produce transactions  
 3 at issue. Moreover, it is clear that Plaintiff fully perfected its trust claim under the  
 4 Act.

5 V.

6 **NO BOND SHOULD BE REQUIRED TO GRANT PRELIMINARY**  
 7 **RELIEF**

8 No bond should be required to be posted as a condition of preliminary relief.  
 9 Federal Rule of Civil Procedure 65(c) speaks of requiring a bond "for the payment  
 10 of such costs and damages as may be incurred or suffered by any party who is  
 11 found to have been wrongfully enjoined or restrained." However, the court has the  
 12 discretion to dispense with the requirement of a bond completely under appropriate  
 13 circumstances or to require a nominal bond. *Sundor Brands, Inc. v. Borden, Inc.*,  
 14 653 F. Supp. 86, 93 (M.D. Fla. 1986). *See also, California ex rel. Van De Kamp v.*  
 15 *Tahoe Regional Planning Agency*, 766 F.2d 1319, 1324-25, *as amended*, 775 F.2d  
 16 998 (9th Cir. 1985); *Wayne Chemical, Inc. v. Columbus Agency Serv. Corp.*, 567  
 17 F.2d 692, 701 (7th Cir. 1977).

18 In the instant matter, Defendants are to be ordered simply to comply with the  
 19 trust provisions of the PACA. As it is required to do by law, Defendants are to  
 20 sequester the PACA trust assets to which it lacks equitable title and to use them for  
 21 the statutorily mandated purpose of satisfying qualified PACA claims.

22 *The monies are clearly not Defendants' property.* Rather, Defendants  
 23 merely hold them as trustee for Plaintiff. Accordingly, there is no potential harm  
 24 to Defendants from an order compelling them to comply with the law and to set  
 25 aside funds that are not Defendants' property.

26 Under these circumstances, no bond should be required. In none of the other  
 27 reported cases under the PACA trust provisions in which preliminary relief was  
 28 ordered, did the court require a bond. *See, e.g., J.R. Brooks & Son, Inc. v.*

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 *Norman's Country Mkt., Inc.*, *supra*, 98 B.R. at 50-51; *In re W.L. Bradley Co.*, 75  
 2 B.R. 505, 513-14 (Bankr. E.D. Pa. 1987). *In Finest Fruits, Inc. v. Edward Boker,*  
 3 *Inc.*, 86 Civ. 3903 (S.D.N.Y. May 30, 1986), in his bench ruling, District Judge  
 4 Haight specifically and expressly held that no bond was necessary. A true and  
 5 correct copy of this ruling is attached hereto and incorporated by reference as  
 6 **Exhibit 2.**

7 Accordingly, Plaintiff submits that the posting of a bond should not be a  
 8 condition of obtaining a temporary restraining order or preliminary injunction  
 9 compelling Defendants to comply with the trust provisions of the PACA and to set  
 10 aside the trust funds in their possession. Alternatively, should this Court feel some  
 11 bond is appropriate, no more than a nominal bond should be required.

## 12 VI.

### 13 **THE PACA TRUST BENEFICIARY IS ENTITLED TO RECOVER** 14 **ATTORNEY'S FEES AND COSTS EXPENDED TO RECOVER AMOUNTS** 15 **DUE AS WELL AS PREJUDGMENT AND POSTJUDGMENT INTEREST** 16 **PURSUANT TO THE PROVISIONS OF THE PACA TRUST AND** 17 **SPECIFIC AGREEMENT**

18  
 19 PACA trust beneficiaries who are compelled to bring a lawsuit to prevent  
 20 dissipation of PACA trust assets are entitled to recover reasonable attorney fees  
 21 and other costs incurred thereby. *In re Monterey House, Inc.*, 71 B.R. 244 (Bankr.  
 22 S.D. Texas 1986). *See also, In re Milton Poulos, Inc.*, 71 B.R. 244, 248 (Bankr.  
 23 S.D. Tex. 1986); *Continental Sales Co. v. Billings*, No. 4-93-2763 (S.D. Tex. Mar.  
 24 6, 1996).

25 Furthermore, the sales agreements for the subject transactions between  
 26 Plaintiff and Defendants included a provision for reimbursement of attorney's fees  
 27 in the event litigation is commenced to recover the sums due under the invoices.  
 28 See, Group Exhibit 1 appended to the declaration of Manuel Reynoso. In addition,

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 Plaintiff's invoices contained additional language for finance charges at the rate of  
 2 1.5% per month (18% annually). *See again*, Group Exhibit 1 appended to the  
 3 Declaration of Manuel Reynoso, Plaintiff's representative, filed herewith. Under  
 4 these circumstances, the Ninth Circuit has held that attorney's fees incurred by an  
 5 unpaid produce supplier in connection with enforcing PACA trust rights plus  
 6 written terms for recovery of finance charges, are to be included within the PACA  
 7 trust claim. *Middle Mountain Land and Produce, Inc. v. Sound Commodities, Inc.*,  
 8 307 F.3d 1220 (9<sup>th</sup> Cir. 2002); (when invoices provide for recovery of attorney's  
 9 fees and finance charges, those fees and charges are to be considered sums 'in  
 10 connection with' the produce transactions).

11 For these reasons, Plaintiff requests that they be reimbursed all interest,  
 12 costs, and attorney's fees incurred in bringing this action.

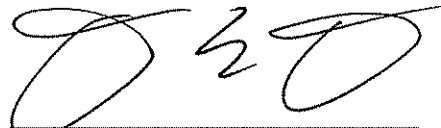
## 13 VII.

## 14 CONCLUSION

15 For all the foregoing reasons, Plaintiff's Motion for Temporary Restraining  
 16 Order and Order to Show Cause re preliminary injunction should be granted.

17  
 18 RYNN & JANOWSKY, LLP

19  
 20  
 21 DATED: March 18, 2008

22 By:   
 23 BART M. BOTTA, Attorneys for  
 24 Plaintiff  
 25  
 26  
 27  
 28

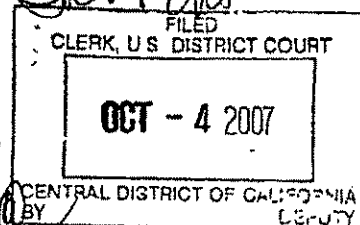
LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 R. JASON READ, State Bar No. 117561  
2 BART M. BOTTA, State Bar No. 167051  
3 RYNN & JANOWSKY, LLP  
4 4100 Newport Place Drive, Suite 700  
5 Newport Beach, CA 92660-2423  
6 Telephone: (949) 752-2911  
7 Facsimile: (949) 752-0953  
8 Jason@rjlaw.com  
9 Bart@rjlaw.com

10 Attorneys for Plaintiffs

11 VAL-PRO, INC., d/b/a VALLEY FRUIT & PRODUCE CO.

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).



*Note change by JFW*

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 VAL-PRO, INC., a corporation d/b/a  
13 VALLEY FRUIT & PRODUCE  
14 COMPANY;

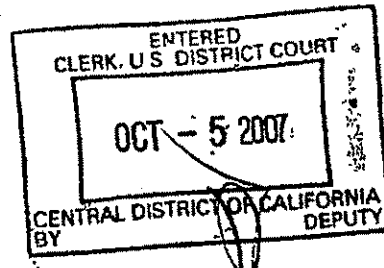
Plaintiffs,

v.

16 NORTHRIDGE PRODUCE, INC., a  
17 corporation; RANDY K. TOMINAGA, an  
18 individual; JANINE TOMINAGA, an  
19 individual; JAIME MARTINEZ, an  
20 individual,

Defendants.

CASE NO.  
**CV07-06400 JFW** JTLX  
~~PROPOSED~~ TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION AND  
PROPOSED PRELIMINARY  
INJUNCTION



21 Upon review of the ~~First Amended~~ Complaint of Plaintiff, VAL-PRO, INC., a  
22 corporation doing business as VALLEY FRUIT & PRODUCE COMPANY (hereinafter  
23 referred to as "Valley Fruit" or "Plaintiff"), on file in the above-captioned action, and the  
24 declarations, exhibits and Memorandum of Points and Authorities in support of Plaintiff's  
25 Application for a Temporary Restraining Order and/or Preliminary Injunction submitted  
26  
27  
28

EXHIBIT

9

LOGGED

2007 OCT - 2 PM 1:25

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953



1 therewith, and it appearing to the satisfaction of the Court that this is a proper case for  
 2 granting a Temporary Restraining Order and Order to Show Cause.

3 IT IS HEREBY ORDERED that Defendants NORTHRIDGE PRODUCE, INC.  
 4 ("NPI"); JAIME MARTINEZ ("JM"), and MARTINA MARTINEZ ("MM"),  
 5 (collectively referred to as "Defendants") appear in Courtroom 16 of the U.S. District  
 6 Court for the Central District of California, Los Angeles Division, 312 North Spring  
 7 Street, Los Angeles, CA 90012-4701 on October 19, <sup>2007</sup>~~2006~~, at 10:00 a.m., or as  
 8 soon thereafter as the matter may be heard, then and there to show cause, if any they  
 9 have, why they, their agents, bankers, subsidiaries, successors, assignees, principals,  
 10 employees, attorneys, and representatives should not be restrained and preliminarily  
 11 enjoined during the pendency of this action, pursuant to Rule 65 of the Federal Rules of  
 12 Civil Procedure, from engaging in, committing, or performing directly and indirectly, any  
 13 and all of the following acts:

14 A. Removing, withdrawing, transferring, assigning or selling to any other  
 15 person or entity, the proceeds from the sales of any or all existing or future inventories of  
 16 food or other products derived from perishable (including frozen) agricultural  
 17 commodities, and/or receipts of payment for products sold prior to the date of this order  
 18 and/or otherwise disposing of assets, books or funds;

19 B. Taking any other action whatsoever which causes, has the effect of causing,  
 20 or which otherwise dissipates Plaintiff's beneficiary interests in trust assets of the  
 21 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e *et seq.*];

22 C. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
 23 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].

24 IT IS FURTHER ORDERED that Defendants, their owners, officers, directors,  
 25 agents, subsidiaries, successors, assignees, principals, assignors, attorneys and persons  
 26 acting in concert with them, appear at the same time and place to show cause, if any they  
 27 have, why they should not be commanded by order of this Court and required to  
 28 distribute PACA trust assets in the amount of at least \$74,890.51, the cumulative amount

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0853

1 of the PACA Trust principal owing to Plaintiff, plus finance charges accrued through  
 2 October 1, 2007 in the amount of \$4,006.48, plus reasonable attorney's fees in the  
 3 amount of \$4,387.50, plus filing fees of \$350.00, making in all the sum of \$83,634.49 as  
 4 of the date hereof.

5 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 6 foregoing Order to Show Cause, Defendants, their agents, bankers, subsidiaries,  
 7 successors, assignees, principals, attorneys, and persons acting in concert with them shall  
 8 be and hereby are prevented from transferring, withdrawing or in any other manner  
 9 removing Perishable Agricultural Commodities Act [7 U.S.C. §499e *et seq.*] trust assets,  
 10 including funds on deposit in banking accounts held by or on behalf of Defendants, from  
 11 Defendants' banking accounts, including but not limited to Defendants' Citibank account  
 12 number 3554034433 and any other accounts subsequently discovered to be standing in  
 13 any Defendants' names.

14 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 15 foregoing Order to Show Cause, and continuing thereafter, Defendants and their counsel,  
 16 agents, or representatives, shall be preliminarily enjoined from engaging in, committing,  
 17 or performing directly and indirectly, any and all of the following acts:

18 D. Removing, withdrawing, transferring, assigning or selling to any other  
 19 person or entity, the proceeds from the sales of any or all existing or future inventories of  
 20 food or other products derived from perishable agricultural commodities, and/or receipts  
 21 of payment for products or crops sold prior to the date of this order and/or otherwise  
 22 disposing of assets, books or funds;

23 E. Taking any other action whatsoever which causes, has the effect of causing,  
 24 or which otherwise dissipates Plaintiff's beneficiary interests in the trust assets;

25 F. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
 26 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable Agricultural  
 27 Commodities Act ("PACA)].  
 28

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 IT IS FURTHER ORDERED that in the event Defendants lack sufficient funds to  
 2 promptly deposit the sums described above, Defendants shall be and hereby are required  
 3 and ordered to:

4 G. Immediately account to the Court and Plaintiff for all assets of the PACA  
 5 trust from commencement of Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' inventory of perishable agricultural  
 7 commodities and produce related receivables to Plaintiff for sale and collection until  
 8 Plaintiff is fully paid, and deposit and/or deliver complete accounts, records, and  
 9 information of all of said receivables to Plaintiff's counsel without charge to the trust,  
 10 and subject to Plaintiff's counsel making a weekly accounting for all receivables received  
 11 or collected by Plaintiff's counsel in that regard. Plaintiff's counsel shall act as trustee in  
 12 connection with its duties of collection of the accounts receivable and shall deposit any  
 13 cash assets of the trust which are collected under this order in a trust account.

14 I. Endorse any checks made, endorsed or paid, to Defendants which are trust  
 15 assets and which are in their possession or obtainable by Defendants at the time of the  
 16 entry of this Order, or which Defendants obtain or which become obtainable by  
 17 Defendants after the entry of this Order, including but not limited to checks representing  
 18 payment for sales of inventory, and shall deliver said assets within 48 hours of  
 19 Defendants' receipt of them to Plaintiff's counsel as set forth above. Likewise,  
 20 Defendants shall deliver any cash assets of the PACA trust which are in its possession or  
 21 are obtainable by Defendants at the time of the entry of this order, or which Defendants  
 22 obtain or which become obtainable by Defendants after entry of this Order, within 48  
 23 hours of Defendants' receipt of them to Plaintiff's counsel.

24 J. File weekly with this Court satisfactory evidence of compliance with the  
 25 terms of this Order.

26 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 27 foregoing Order to Show Cause, and continuing thereafter, Plaintiff and their counsel,  
 28 agents, or representatives, shall have full and complete and continuing access to all of

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953



1 Defendants' books and records, which shall include but not necessarily be limited to,  
 2 Defendants' accounts receivable and payable ledgers, invoices, ledgers, computer runs,  
 3 bank statements and canceled checks; relating to Defendants' business and personal  
 4 financial status from commencement of Defendants' business activities forward for the  
 5 purpose of verifying Defendants' accountings required by this Order and for enforcement  
 6 of this Order. Defendants shall, upon 48 hours notice by Plaintiff's counsel, allow  
 7 inspection and copying of the books and records of said Defendants by Plaintiff or its  
 8 representatives at Defendants' place of business.

9 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 10 foregoing Order to Show Cause, and continuing thereafter, Plaintiff shall be entitled to  
 11 depose, under oath, at reasonable times and places, upon at least 48 hours notice,  
 12 Defendants and/or Defendants' other principals, owners, directors, officers, shareholders,  
 13 employees, agents and accountants concerning any matter pertaining to any accounting  
 14 due pursuant to this Order, any books or records which Plaintiff are entitled to inspect  
 15 under this Order, the trust assets or any of Defendants' business assets, and/or  
 16 Defendants' business practices, procedures or operations from commencement of  
 17 Defendants' business activities.

18 IT IS FURTHER ORDERED that Plaintiff may immediately take whatever steps  
 19 are reasonably necessary to mitigate Plaintiff's damages by selling current inventory of  
 20 fresh herbs previously sold to Defendants but for which Defendants have not paid  
 21 Plaintiff, all such sales proceeds to be applied to Defendants' account.

22 IT IS FURTHER ORDERED that no bond shall be required to be posted by  
 23 Plaintiff before the Temporary Restraining Order is effective.

24 IT IS FURTHER ORDERED that Plaintiff shall <sup>personally</sup> serve Defendants with copies of  
 25 this Order and all pleadings and other papers in support of the Order on or before  
 26 October 8, 2007 ~~by Federal Express with verification of receipt.~~ Defendants shall file  
 27 an Opposition, if any, to the Order to Show Cause on or before 4:00 p.m. on  
 28 October 12, 2007, and shall personally serve Plaintiff's counsel with a copy of said

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 Opposition by said deadline. Plaintiff shall file and serve a Reply to Defendants'  
2 Opposition, if any, on or before 4:00 p.m. on October 16, 2007

3  
4 DATED: October 4, 2007

  
U.S. DISTRICT COURT JUDGE

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92860  
(949) 752-2811  
FAX (949) 752-0953

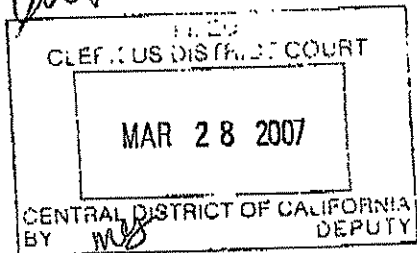
Mar-28-2007 10:51am From-

2138845528

T-985 P.002/007 F-505

ORIGINAL

LEWIS P. JANOWSKY, SBN 092735  
 ELISE O'BRIEN, SBN 245967  
 RYNN & JANOWSKY, LLP  
 4100 Newport Place Drive, Suite 700  
 Newport Beach, CA 92660  
 Telephone: (949) 752-2911  
 Facsimile: (949) 752-0953  
 E-Mail: [rj@rjlaw.com](mailto:rj@rjlaw.com)



Attorneys for Plaintiffs  
 PROGRESSIVE PRODUCE CORPORATION  
 dba PROGRESSIVE MARKETING GROUP and  
 GO-FRESH PRODUCE, INC.

UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

PROGRESSIVE PRODUCE  
 CORPORATION dba  
 PROGRESSIVE MARKETING  
 GROUP, a corporation; GO-FRESH  
 PRODUCE, INC., a corporation,

Plaintiffs,

v.

FARM FRESH RANCH MARKET,  
 INC., a corporation; HOSSEIN  
 SALEMI aka HENRY SALEMI, an  
 individual; SALFOLLAH DASSIAN  
 aka STEVE DASSIAN, an individual,

Defendants.

CASE NO.

**CV07-02013 FMC** *CPJux*  
 [REDACTED] TEMPORARY  
 RESTRAINING ORDER AND  
 ORDER TO SHOW CAUSE RE  
 PRELIMINARY INJUNCTION  
 AND PROPOSED PRELIMINARY  
 INJUNCTION

Upon review of the Complaint of Plaintiffs, PROGRESSIVE PRODUCE CORPORATION dba PROGRESSIVE MARKETING GROUP ("Progressive") and GO-FRESH PRODUCE, INC. ("Go-Fresh") (collectively hereinafter

07-141/TRO.doc

LAW OFFICES  
 RYNN & JANOWSKY, LLC  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

LOGGED

2007 MAR 28 PM 3:37

Mar-28-2007 10:51am From-

2138945528

T-985 P.003/007 F-505

1 "Plaintiffs"), on file in the above-captioned action, and the declarations, exhibits  
 2 and Memorandum of Points and Authorities in support of Plaintiffs' Motion for a  
 3 Temporary Restraining Order and/or Preliminary Injunction submitted therewith,  
 4 and any and all documents provided by Defendants FARM FRESH RANCH  
 5 MARKET, INC. ("FFRM"), HOSSEIN SALEMI aka HENRY SALEMI  
 6 ("Salemi"), and SALFOLLAH DASSIAN aka STEVE DASSIAN ("Dassian")  
 7 (collectively referred to as "Defendants") in opposition thereto, and it appearing to  
 8 the satisfaction of the Court that this is a proper case for granting a Temporary  
 9 Restraining Order and Order to Show Cause.

10 IT IS HEREBY ORDERED that Defendants appear in Courtroom <sup>150</sup>~~760~~ of  
 11 the U.S. District Court for the Central District of California,  
 12 255 E. TEMPLE ST., Los Angeles, California on WED. APRIL 11, 2007  
 13 2007, at 3<sup>00</sup> p.m., or as soon thereafter as the matter may be heard, then and  
 14 there to show cause, if any they have, why they, their agents, bankers, subsidiaries,  
 15 successors, assignees, principals, employees, attorneys, and representatives should  
 16 not be restrained and preliminarily enjoined during the pendency of this action,  
 17 pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging in,  
 18 committing, or performing directly and indirectly, any and all of the following  
 19 acts:

20 A. Removing, withdrawing, transferring, assigning or selling to any other  
 21 person or entity, the proceeds from the sales of any or all existing or future  
 22 inventories of food or other products derived from perishable (including frozen)  
 23 agricultural commodities, and/or receipts of payment for products sold prior to the  
 24 date of this order and/or otherwise disposing of assets, books or funds;

25 B. Taking any other action whatsoever which causes, has the effect of  
 26 causing, or which otherwise dissipates Plaintiffs' beneficiary interests in trust  
 27 assets of the Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e  
 28 *et seq.*];

07-141/TRO.doc

LAW OFFICES  
 RYNN & JANOWSKY, LLC  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

Mar-28-2007 10:51am From-

2138945528

T-985 P.004/007 F-505

1 C. Taking any other action whatsoever which violates 7 U.S.C.  
2 §499e(c)(1) through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].

3 IT IS FURTHER ORDERED that Defendants, their owners, officers,  
4 directors, agents, subsidiaries, successors, assignees, principals, assignors,  
5 attorneys and persons acting in concert with them, appear at the same time and  
6 place to show cause, if any they have, why they should not be commanded by  
7 order of this Court and required to distribute PACA trust assets in the total amount  
8 of at least \$81,626.48, which is \$72,418.50 (\$22,950.50 for Progressive;  
9 \$49,468.00 for Go-Fresh) in the amount of the PACA trust principal owing to  
10 Plaintiffs, plus finance charges accrued through March 26, 2007 for Plaintiff  
11 Progress in the amount of \$1,518.37, plus interest charges accrued through March  
12 26, 2007 for Plaintiff Go-Fresh in the amount of \$1,602.11, plus reasonable  
13 attorney's fees in the amount of \$5,737.50 plus filing fees of \$350.00.

14 IT IS FURTHER ORDERED that pending the hearing and determination of  
15 the foregoing Order to Show Cause, Defendants, their agents, bankers,  
16 subsidiaries, successors, assignees, principals, attorneys, and persons acting in  
17 concert with them shall be and hereby are prevented from transferring,  
18 withdrawing or in any other manner removing Perishable Agricultural  
19 Commodities Act [7 U.S.C. §499e *et seq.*] trust assets, including funds on deposit  
20 in banking accounts held by or on behalf of Defendants, from Defendants' banking  
21 accounts, including but not limited to Defendants' account number 751007709 at  
22 Bank of the West, 1234 East Main Street, El Cajon, California 92021, and any  
23 other accounts subsequently discovered to be standing in any Defendants' names.

24 IT IS FURTHER ORDERED that pending the hearing and determination of  
25 the foregoing Order to Show Cause, and continuing thereafter, Defendants and  
26 their counsel, agents, or representatives, shall be preliminarily enjoined from  
27 engaging in, committing, or performing directly and indirectly, any and all of the  
28 following acts:

07-141/TRO.doc

LAW OFFICES  
RYNN & JANDOWSKY, LLC  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0863



Mar-28-2007 10:52am From-

2138945528

T-985 P.005/007 F-505

1 D. Removing, withdrawing, transferring, assigning or selling to any other  
 2 person or entity, the proceeds from the sales of any or all existing or future  
 3 inventories of food or other products derived from perishable agricultural  
 4 commodities, and/or receipts of payment for products or crops sold prior to the  
 5 date of this order and/or otherwise disposing of assets, books or funds;

6 E. Taking any other action whatsoever which causes, has the effect of  
 7 causing, or which otherwise dissipates Plaintiffs' beneficiary interests in the trust  
 8 assets;

9 F. Taking any other action whatsoever which violates 7 U.S.C.  
 10 §499e(c)(1) through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable  
 11 Agricultural Commodities Act ("PACA)].

12 IT IS FURTHER ORDERED that in the event Defendants lack sufficient  
 13 funds to promptly deposit the sums described above, Defendants shall be and  
 14 hereby are required and ordered to:

15 G. Immediately account to the Court and Plaintiffs for all assets of the  
 16 PACA trust from commencement of Defendants' business through the date of this  
 17 Order.

18 H. Immediately assign Defendants' inventory of perishable agricultural  
 19 commodities and produce related receivables to Plaintiffs for sale and collection  
 20 until Plaintiffs is fully paid, and deposit and/or deliver complete accounts, records,  
 21 and information of all of said receivables to Plaintiffs' counsel without charge to  
 22 the trust, and subject to Plaintiffs' counsel making a weekly accounting for all  
 23 receivables received or collected by Plaintiffs' counsel in that regard. Plaintiffs'  
 24 counsel shall act as trustee in connection with its duties of collection of the  
 25 accounts receivable and shall deposit any cash assets of the trust which are  
 26 collected under this order in a trust account.

27 I. Endorse any checks made, endorsed or paid, to Defendants which are  
 28 trust assets and which are in their possession or obtainable by Defendants at the

07-141/TRO.doc

Mar-28-2007 10:52am From-

2138945528

T-985 P.006/007 F-505

1 time of the entry of this Order, or which Defendants obtain or which become  
 2 obtainable by Defendants after the entry of this Order, including but not limited to  
 3 checks representing payment for sales of inventory, and shall deliver said assets  
 4 within 48 hours of Defendants' receipt of them to Plaintiffs' counsel as set forth  
 5 above. Likewise, Defendants shall deliver any cash assets of the PACA trust  
 6 which are in its possession or are obtainable by Defendants at the time of the entry  
 7 of this order, or which Defendants obtain or which become obtainable by  
 8 Defendants after entry of this Order, within 48 hours of Defendants' receipt of  
 9 them to Plaintiffs' counsel.

10 J. File weekly with this Court satisfactory evidence of compliance with  
 11 the terms of this Order.

12 IT IS FURTHER ORDERED that pending the hearing and determination of  
 13 the foregoing Order to Show Cause, and continuing thereafter, Plaintiffs and their  
 14 counsel, agents, or representatives, shall have full and complete and continuing  
 15 access to all of Defendants' books and records, which shall include but not  
 16 necessarily be limited to, Defendants' accounts receivable and payable ledgers,  
 17 invoices, ledgers, computer runs, bank statements and canceled checks, relating to  
 18 Defendants' business and personal financial status from commencement of  
 19 Defendants' business activities forward for the purpose of verifying Defendants'  
 20 accountings required by this Order and for enforcement of this Order. Defendants  
 21 shall, upon 2 business days notice by Plaintiffs' counsel, allow inspection and  
 22 copying of the books and records of said Defendants by Plaintiffs or their  
 23 representatives at Defendants' place of business.

24 IT IS FURTHER ORDERED that pending the hearing and determination of  
 25 the foregoing Order to Show Cause, and continuing thereafter, Plaintiffs shall be  
 26 entitled to depose, under oath, at reasonable times and places, upon at least 2  
 27 business days notice, Defendants and/or Defendants' other principals, owners,  
 28 directors, officers, shareholders, employees, agents and accountants concerning

07-141/TRO.doc

LAW OFFICES  
 RYNN & JANOWSKY, LLC  
 4100 NEWPORT PLAGE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2811  
 FAX (949) 752-0953

Mar-28-2007 10:53am From-

2138945528

T-985 P.007/007 F-505

1 any matter pertaining to any accounting due pursuant to this Order, any books or  
 2 records which Plaintiffs are entitled to inspect under this Order, the trust assets or  
 3 any of Defendants' business assets, and/or Defendants' business practices,  
 4 procedures or operations from commencement of Defendants' business activities.

5 IT IS FURTHER ORDERED that Plaintiffs are to serve copies of this Order  
 6 and all pleadings and other papers in support of the Order on or before  
 7 5<sup>00</sup> pm 3/28/07 Defendants shall file an Opposition, if any, to the Order to Show  
 8 Cause on or before 4<sup>00</sup> p.m. on APRIL 4, 2007 and shall personally  
 9 serve Plaintiffs' counsel with a copy of said opposition by the same deadline.  
 10 Plaintiffs shall file and serve on Defendants a Reply to Defendants' Opposition on  
 11 or before 4<sup>00</sup> p.m. on APRIL 9, 2007.

12 IT IS FURTHER ORDERED that no bond shall be required to be posted by  
 13 Plaintiffs before the Temporary Restraining Order is effective.

14  
 15  
 16 DATED: March 28, 2007

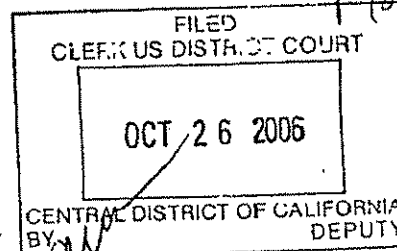
*Lawrence Mark Cooper*  
 U.S. DISTRICT COURT JUDGE

LAW OFFICES  
 RYNN & JANOWSKY, LLC  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92860  
 (949) 752-2911  
 FAX (949) 752-0863



1 R. JASON READ, State Bar No. 117561  
2 BART M. BOTTA, State Bar No. 167051  
3 RYNN & JANOWSKY, LLP  
4 4100 Newport Place Drive, Suite 700  
Newport Beach, CA 92660-2423  
Telephone: (949) 752-2911

5 Attorneys for Plaintiffs  
6 DAVALAN SALES, INC., and  
THE BANANA COMPANY



IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 BY  
12 DAVALAN SALES, INC., a corporation;  
13 DAVALAN SALES, INC, a corporation  
14 trading as the BANANA COMPANY,

Plaintiffs,

v.

16 A.S.A. PRODUCE CO., INC., a  
17 corporation; ALI MOEZZI, an individual,

Defendants.

16544  
CASE NO. CV-06-5699 FMC (RZx)

**AMENDED  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY  
INJUNCTION AND PROPOSED  
PRELIMINARY INJUNCTION**

20 Upon review of the Complaint of Plaintiffs DAVALAN SALES, INC. ("DVI"),  
21 and THE BANANA COMPANY ("TBC") (hereinafter referred to collectively as  
22 "Plaintiffs"), on file in the above-captioned action, and the declarations, exhibits and  
23 Memorandum of Points and Authorities in support of Plaintiffs' Motion for a Temporary  
24 Restraining Order and/or Preliminary Injunction submitted therewith, and all documents  
25 provided by Defendants A.S.A. PRODUCE CO., INC. ("A.S.A."), a corporation; and  
26 ALI MOEZZI ("AM"), an individual; (hereinafter referred to collectively as  
27 "Defendants"), in opposition thereto, if any, and it appearing to the satisfaction of the

DOCKETED ON CM

OCT 27 2006

LODGED

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2911  
FAX (949) 752-0853

1 Court that this is a proper case for granting a Temporary Restraining Order and Order to  
2 Show Cause,

3 IT IS HEREBY ORDERED that Defendants appear in Courtroom # 750 of the  
4 U.S.-District Court for the Central District of California, Los Angeles Division, 255  
5 E. TEMPLE North Spring Street, Los Angeles, CA 90012-4701 on Nov. 8, 2006, at  
6 2:30 p.m., or as soon thereafter as the matter may be heard, then and there to show  
7 cause, if any they have, why they, their agents, bankers, subsidiaries, successors,  
8 assignees, principals, employees, attorneys, and representatives should not be restrained  
9 and preliminarily enjoined during the pendency of this action, pursuant to Rule 65 of the  
10 Federal Rules of Civil Procedure, from engaging in, committing, or performing directly  
11 and indirectly, any and all of the following acts:

12 A. Removing, withdrawing, transferring, assigning or selling to any other  
13 person or entity, the proceeds from the sales of any or all existing or future inventories of  
14 food or other products derived from perishable agricultural commodities, and/or receipts  
15 of payment for products sold prior to the date of this order and/or otherwise disposing of  
16 assets, books or funds;

17 B. Taking any other action whatsoever which causes, has the effect of causing,  
18 or which otherwise dissipates Plaintiffs' beneficiary interests in trust assets of the  
19 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e *et seq.*];

20 C. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
21 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].

22 IT IS FURTHER ORDERED that Defendants, their officers, directors, bankers,  
23 agents, subsidiaries, successors, assignees, principals, assignors, attorneys and persons  
24 acting in concert with them, appear at the same time and place to show cause, if any they  
25 have, why they should not be commanded by order of this Court and required to  
26 distribute PACA Trust assets in the amount of at least \$45,143.79 which includes  
27 \$37,647.00, the cumulative amount of the PACA Trust principal owing to Plaintiffs, plus  
28 \$2,889.29 in finance charges through October 23, 2006, calculated at the agreed-upon

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2911  
FAX (949) 752-0963

1 rate of 1-1/2% per month, plus reasonable attorney's fees in the amount of \$4,257.50 plus  
 2 filing fees of \$350.00.

3 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 4 foregoing Order to Show Cause, Defendants, their agents, bankers, subsidiaries,  
 5 successors, assignees, principals, attorneys, and persons acting in concert with them shall  
 6 be and hereby are prevented from transferring, withdrawing or in any other manner  
 7 removing Perishable Agricultural Commodities Act [7 U.S.C. §499e *et seq.*] trust assets,  
 8 including funds on deposit in banking accounts held by or on behalf of Defendants, from  
 9 Defendants' banking accounts, including but not limited to Defendants' accounts at  
 10 Alliance Bank, 100 Corporate Pointe, Culver City, CA 90230, account no. 01027514, or  
 11 any other banking account subsequently determined to be standing in Defendants' names,  
 12 or any one of them.

13 IT IS FURTHER ORDERED that pending the hearing and determination of the  
 14 foregoing Order to Show Cause, and continuing thereafter, Defendants and their counsel,  
 15 agents, or representatives, shall be preliminarily enjoined from engaging in, committing,  
 16 or performing directly and indirectly, any and all of the following acts:

17 D. Removing, withdrawing, transferring, assigning or selling to any other  
 18 person or entity, the proceeds from the sales of any or all existing or future inventories of  
 19 food or other products derived from perishable agricultural commodities, and/or receipts  
 20 of payment for products or crops sold prior to the date of this order and/or otherwise  
 21 disposing of assets, books or funds;

22 E. Taking any other action whatsoever which causes, has the effect of causing,  
 23 or which otherwise dissipates Plaintiffs' beneficiary interests in the trust assets;

24 F. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
 25 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable Agricultural  
 26 Commodities Act ("PACA)].

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660-2423  
 (949) 752-2911  
 FAX (949) 752-0953

1 IT IS FURTHER ORDERED that in the event Defendants lack sufficient funds to  
2 promptly deposit the sums described above, Defendants shall be and hereby are required  
3 and ordered to:

4 G. Immediately account to the Court and Plaintiff for all assets of the PACA  
5 trust from commencement of Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' produce related receivables to Plaintiffs  
7 for collection until Plaintiffs are fully paid, and deposit and/or deliver complete accounts,  
8 records, and information of all of said receivables to Plaintiffs' counsel without charge to  
9 the trust, and subject to Plaintiffs' counsel making a weekly accounting for all receivables  
10 received or collected by Plaintiffs' counsel in that regard. Plaintiffs' counsel shall act as  
11 trustee in connection with its duties of collection of the accounts receivable and shall  
12 deposit any cash assets of the trust which are collected under this order in a trust account.

13 I. Endorse any checks made, endorsed or paid, to Defendants which are trust  
14 assets and which are in their possession or obtainable by Defendants at the time of the  
15 entry of this Order, or which Defendants obtain or which become obtainable by  
16 Defendants after the entry of this Order, including but not limited to checks representing  
17 payment for sales of growing crops, and shall deliver said assets within 48 hours of  
18 Defendants' receipt of them to Plaintiffs' counsel as set forth above. Likewise,  
19 Defendants shall deliver any cash assets of the PACA trust which are in its possession or  
20 are obtainable by Defendants at the time of the entry of this order, or which Defendants  
21 obtain or which become obtainable by Defendants after entry of this Order, within 48  
22 hours of Defendants' receipt of them to Plaintiffs' counsel.

23 J. File weekly with this Court satisfactory evidence of compliance with the  
24 terms of this Order.

25 IT IS FURTHER ORDERED that pending the hearing and determination of the  
26 foregoing Order to Show Cause, and continuing thereafter, Plaintiffs and their counsel,  
27 agents, or representatives, shall have full and complete and continuing access to all of  
28 Defendants' books and records, which shall include but not necessarily be limited to,

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2911  
FAX (949) 752-0953

1 Defendants' accounts receivable and payable ledgers, invoices, ledgers, computer runs,  
2 bank statements and canceled checks, relating to Defendants' business and personal  
3 financial status from commencement of Defendants' business activities forward for the  
4 purpose of verifying Defendants' accountings required by this Order and for enforcement  
5 of this Order. Defendants shall, upon 2 business days notice by Plaintiffs' counsel, allow  
6 inspection and copying of the books and records of said Defendants by Plaintiffs or their  
7 representatives at Defendants' place of business.

8 IT IS FURTHER ORDERED that pending the hearing and determination of the  
9 foregoing Order to Show Cause, and continuing thereafter, Plaintiffs shall be entitled to  
10 depose, under oath, at reasonable times and places, upon at least 2 business days notice,  
11 Defendants and/or Defendants' other principals, owners, directors, officers, shareholders,  
12 employees, agents and accountants concerning any matter pertaining to any accounting  
13 due pursuant to this Order, any books or records which Plaintiff is entitled to inspect  
14 under this Order, the trust assets or any of Defendants' business assets, and/or  
15 Defendants' business practices, procedures or operations from commencement of  
16 Defendants' business activities.

17 IT IS FURTHER ORDERED that Plaintiff is to serve copies of this Order and all  
18 pleadings and other papers in support of the Order on or before 10/27/06.  
19 Defendants shall file an Opposition, if any, to the Order to Show Cause on or before  
20 4<sup>00</sup> p.m. on 11/2, 2006 and shall personally serve Plaintiffs' counsel  
21 with a copy of said opposition by the same deadline. Plaintiffs shall file and serve on  
22 Defendants a Reply to Defendants' Opposition on or before 4<sup>00</sup> p.m. on  
23 11/7, 2006.

24 IT IS FURTHER ORDERED that no bond shall be required to be posted by  
25 Plaintiff before the Temporary Restraining Order is effective.

26  
27 DATED: Oct 26, 2006

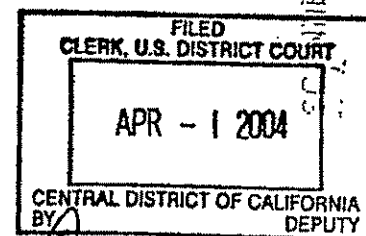
*Florence-Maria Cooper*  
U.S. DISTRICT COURT JUDGE



1 R. JASON READ, State Bar No. 117561  
 2 MINDY JAMES NILI, State Bar No. 197226  
 3 RYNN & JANOWSKY, LLP  
 4 4100 Newport Place Drive, Suite 700  
 Newport Beach, CA 92660-2423  
 Telephone: (949) 752-2911

5 Attorneys for Plaintiff  
 6 GRANDVIEW RANCH, INC.

Priority ☒  
 Send ☐  
 Enter ☐  
 Closed ☐  
 JS-5/JS-6 ☐  
 JS-2/JS-3 ☐  
 Scan Only ☐



IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION

**CV 04 - 02159** JFW Ex

GRANDVIEW RANCH, INC., a CASE NO.  
 Corporation,

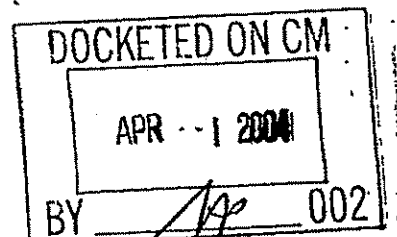
Plaintiff,

v.

15 HALUM MARKETS, INC., a  
 16 corporation doing business  
 as COACHELLA RANCH MARKET;  
 17 ABŞA, INC., a corporation  
 doing business as EL SUPER  
 18 TORO LOCO; ABESUD D. HALUM,  
 19 a/k/a ABBY HALUM, an  
 individual; MONA HALUM, an  
 20 individual,

Defendants.

[PROPOSED] TEMPORARY  
 RESTRAINING ORDER AND ORDER  
 TO SHOW CAUSE RE PRELIMINARY  
 INJUNCTION AND PROPOSED  
 PRELIMINARY INJUNCTION



23 Upon review of the Complaint of Plaintiff GRANDVIEW  
 24 RANCH, INC. (hereinafter referred to as "Grandview" or  
 25 "Plaintiff"), on file in the above-captioned action, and  
 26 the declarations, exhibits and Memorandum of Points and  
 27 Authorities in support of Plaintiff's Motion for a  
 28

LOGGED

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660-2423  
 (949) 752-2911  
 FAX (949) 752-0953

8

1 Temporary Restraining Order and/or Preliminary Injunction  
 2 submitted therewith, and ~~all documents provided~~ <sup>as a result of</sup> by  
 3 Defendants HALUM MARKETS, INC. ("HMI"), a corporation doing  
 4 business as COACHELLA RANCH MARKET ("CRM"), ABSA, INC.  
 5 ("ABSA"), a corporation doing business as EL SUPER TORO  
 6 LOCO ("Toro Loco"), ABESUD D. HALUM, a/k/a ABBY HALUM  
 7 ("AH"), and MONA HALUM ("MH"), (hereinafter referred to  
 8 collectively as "Defendants"), ~~in~~ <sup>failure to file an</sup> opposition thereto, ~~if~~  
 9 ~~any~~, and it appearing to the satisfaction of the Court that  
 10 this is a proper case for granting a Temporary Restraining  
 11 Order and Order to Show Cause,

12 IT IS HEREBY ORDERED that Defendants HMI, CRM and ABSA  
 13 appear in Courtroom 16 of the U.S. District Court for the  
 14 Central District of California, <sup>312 North Spring Street</sup> ~~Riverside Division, 3470~~  
 15 <sup>Los Angeles, CA 90012</sup> ~~Twelfth Street, Riverside, CA 92501~~ on <sup>April 12</sup> ~~March~~ 13, 2004, at 1:30  
 16 P.m., or as soon thereafter as the matter may be heard,  
 17 then and there to show cause, if any they have, why they,  
 18 their agents, bankers, subsidiaries, successors, assignees,  
 19 transferees, principals, employees, attorneys, and  
 20 representatives should not be restrained and preliminarily  
 21 enjoined during the pendency of this action, pursuant to  
 22 Rule 65 of the Federal Rules of Civil Procedure, from  
 23 engaging in, committing, or performing directly and  
 24 indirectly, any and all of the following acts:

25 A. Removing, withdrawing, transferring, assigning or  
 26 selling to any other person or entity, the proceeds from  
 27 the sales of any or all existing or future inventories of  
 28 food or other products derived from perishable agricultural

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660-2423  
 (949) 752-2911  
 FAX (949) 752-0953

1 commodities, and/or receipts of payment for products sold  
 2 prior to the date of this order and/or otherwise disposing  
 3 of assets, books or funds;

4 B. Taking any other action whatsoever which causes,  
 5 has the effect of causing, or which otherwise dissipates  
 6 Plaintiff's beneficiary interests in trust assets of the  
 7 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.  
 8 §499e et seq.];

9 C. Taking any other action whatsoever which violates  
 10 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
 11 §499b(4) [§2 of PACA].

12 IT IS FURTHER ORDERED that Defendants HMI, CRM and ABSA  
 13 and their fictitious businesses, their officers, directors,  
 14 bankers, agents, subsidiaries, successors, assignees,  
 15 principals, assignors, attorneys and persons acting in  
 16 concert with them, appear at the same time and place to  
 17 show cause, if any they have, why they should not be  
 18 commanded by order of this Court and required to distribute  
 19 PACA trust assets in the amount of at least \$99,709.96,  
 20 which includes \$97,989.20, the cumulative amount of the  
 21 PACA trust principal owing to Plaintiffs, plus \$1,720.76 in  
 22 finance charges accrued from the dates of default for each  
 23 transaction through March 30, 2004 at the agreed-upon rate  
 24 of 1½% per month (18% annually).

25 IT IS FURTHER ORDERED that pending the hearing and  
 26 ~~determination~~ of the foregoing Order to Show Cause,  
 27 Defendants HMI, CRM and ABSA and their fictitious  
 28 businesses, their agents, bankers, subsidiaries,

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660-2423  
 (949) 752-2811  
 FAX (949) 752-0853

1 successors, assignees, principals, attorneys, and persons  
2 acting in concert with them shall be and hereby are  
3 prevented from transferring, withdrawing or in any other  
4 manner removing Perishable Agricultural Commodities Act [7  
5 U.S.C. §499e et seq.] trust assets, including funds on  
6 deposit in banking accounts held by or on behalf of  
7 Defendants, from Defendants' banking accounts, including  
8 but not limited to Defendants' accounts at Banks (a) Valley  
9 Independent Bank, 1491 Sixth Street, Coachella, CA 92236  
10 account numbers 005513308, 005511976, and 005513022; (b)  
11 Valley Independent Bank, 81-790 Highway 111, Indio, CA  
12 92201 account no. 007504586; and, (c) California Bank &  
13 Trust, 81701 US Highway 111, Indio, CA 92201 account no.  
14 2460008751, or any other banking account subsequently  
15 determined to be standing in Defendants' name's, or any one  
16 of them.

17 IT IS FURTHER ORDERED that pending the hearing and  
18 determination of the foregoing Order to Show Cause, and  
19 continuing thereafter, Defendants and their counsel,  
20 agents, or representatives, shall be preliminarily enjoined  
21 from engaging in, committing, or performing directly and  
22 indirectly, any and all of the following acts:

23 D. Removing, withdrawing, transferring, assigning or  
24 selling to any other person or entity, the proceeds from  
25 the sales of any or all existing or future inventories of  
26 food or other products derived from perishable agricultural  
27 commodities, and/or receipts of payment for products or  
28

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2911  
FAX (949) 752-0953

1 crops sold prior to the date of this order and/or otherwise  
2 disposing of assets, books or funds;

3 E. Taking any other action whatsoever which causes,  
4 has the effect of causing, or which otherwise dissipates  
5 Plaintiff's beneficiary interests in the trust assets;

6 F. Taking any other action whatsoever which violates  
7 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
8 §499b(4) [§2 of Perishable Agricultural Commodities Act  
9 ("PACA)].

10 IT IS FURTHER ORDERED that in the event Defendants lack  
11 sufficient funds to promptly deposit the sums described  
12 above, Defendants shall be and hereby are required and  
13 ordered to:

14 G. Immediately account to the Court and Plaintiff for  
15 all assets of the PACA trust from commencement of  
16 Defendants' business through the date of this Order.

17 H. Immediately assign Defendants' produce related  
18 receivables to Plaintiff for collection until Plaintiff is  
19 fully paid, and deposit and/or deliver complete accounts,  
20 records, and information of all of said receivables to  
21 Plaintiff's counsel without charge to the trust, and  
22 subject to Plaintiff's counsel making a weekly accounting  
23 for all receivables received or collected by Plaintiff's  
24 counsel in that regard. Plaintiff's counsel shall act as  
25 trustee in connection with its duties of collection of the  
26 accounts receivable and shall deposit any cash assets of  
27 the trust which are collected under this order in a trust  
28 account.

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2911  
FAX (949) 752-0953



1 I. Endorse any checks made, endorsed or paid, to  
2 Defendants which are trust assets and which are in their  
3 possession or obtainable by Defendants at the time of the  
4 entry of this Order, or which Defendants obtain or <sup>CANRE</sup>which  
5 become obtainable by Defendants after the entry of this  
6 Order, including but not limited to checks representing  
7 payment for sales of growing crops, and shall deliver said  
8 assets within 48 hours of Defendants' receipt of them to  
9 Plaintiff's counsel as set forth above. Likewise,  
10 Defendants shall deliver any cash assets of the PACA trust  
11 which are in its possession or are obtainable by Defendants  
12 at the time of the entry of this order, or which Defendants  
13 obtain or which become obtainable by Defendants after entry  
14 of this Order, within 48 hours of Defendants' receipt of  
15 them to Plaintiff's counsel.

16 J. File weekly with this Court satisfactory evidence  
17 of compliance with the terms of this Order.

18 ~~IT IS FURTHER ORDERED that pending the hearing and~~  
19 ~~determination of the foregoing Order to Show Cause, and~~  
20 ~~continuing thereafter, Plaintiff and its counsel, agents,~~  
21 ~~or representatives, shall have full and complete and~~  
22 ~~continuing access to all of Defendants' books and records,~~  
23 ~~which shall include but not necessarily be limited to,~~  
24 ~~Defendants' accounts receivable and payable ledgers,~~  
25 ~~invoices, ledgers, computer runs, bank statements and~~  
26 ~~canceled checks, relating to Defendants' business and~~  
27 ~~personal financial status from commencement of Defendants'~~  
28 ~~business activities forward for the purpose of verifying~~

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92680-2423  
(949) 752-2911  
FAX (949) 752-0853

1 Defendants' accountings required by this Order and for  
 2 enforcement of this Order. Defendants shall, upon 2  
 3 business days notice by Plaintiff's counsel, allow  
 4 inspection and copying of the books and records of said  
 5 Defendants by Plaintiff or its representatives at  
 6 Defendants' place of business.

7 IT IS FURTHER ORDERED that pending the hearing and  
 8 determination of the foregoing Order to Show Cause, and  
 9 continuing thereafter, Plaintiff shall be entitled to  
 10 depose, under oath, at reasonable times and places, upon at  
 11 least 2 business days notice, Defendants and/or Defendants'  
 12 other principals, owners, directors, officers,  
 13 shareholders, employees, agents and accountants concerning  
 14 any matter pertaining to any accounting due pursuant to  
 15 this Order, any books or records which Plaintiff is  
 16 entitled to inspect under this Order, the trust assets or  
 17 any of Defendants' business assets, and/or Defendants'  
 18 business practices, procedures or operations from  
 19 commencement of Defendants' business activities, personally

20 IT IS FURTHER ORDERED that Plaintiff is to serve copies  
 21 of this Order and all pleadings and other papers in support  
 22 of the Order on or before April 5, 2004. Defendants shall  
 23 file an Opposition, if any, to the Order to Show Cause on  
 24 or before 3:30 p.m. on April 8, 2004, 2004 and shall

26 / / /

27 / / /

28 / / /

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660-2423  
 (949) 752-2911  
 FAX (949) 752-0953

1 personally serve Plaintiff's counsel with a copy of said  
2 opposition by the same deadline. Plaintiff shall file and  
3 serve on Defendant a Reply to Defendants' Opposition or  
4 before 12:00 p.m. on April 9, 2004. SCANNED

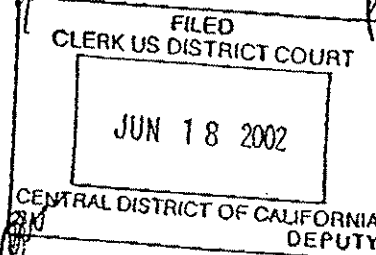
5 IT IS FURTHER ORDERED that no bond shall be required to  
6 be posted by Plaintiff before the Temporary Restraining  
7 Order is effective.

8  
9 DATED: 4/1/04   
10 U.S. DISTRICT COURT JUDGE

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(949) 752-2811  
FAX (949) 752-0953

1 R. JASON READ, SBN 117561  
 2 MINDY L. JAMES, SBN 197226  
 3 RYNN & JANOWSKY  
 4 4100 Newport Place Drive, Suite 700  
 5 Newport Beach, CA 92660  
 6 Telephone: (949) 752-2911  
 7 Facsimile: (949) 752-0953

8 Attorneys for Plaintiff  
 9 MALENA PRODUCE, INC.



10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 MALENA PRODUCE, INC., a  
 13 Corporation,

CASE NO. **02-04795**

14 Plaintiff,

**PROPOSED** TEMPORARY  
 RESTRAINING ORDER AND  
 ORDER TO SHOW CAUSE RE  
 PRELIMINARY INJUNCTION AND  
 PROPOSED PRELIMINARY  
 INJUNCTION

15 v.

16 HUGO IRAHETA, individually  
 17 and doing business as HUGO  
 18 PRODUCE COMPANY,

19 Defendants.

20 Upon review of the Complaint of Plaintiff MALENA  
 21 PRODUCE, INC. ("Malena" or "Plaintiff"), on file in the  
 22 above-captioned action, and the declarations, exhibits and  
 23 Memorandum of Points and Authorities in support of  
 24 Plaintiff's Motion for a Temporary Restraining Order and/or  
 25 Preliminary Injunction submitted therewith, and any and all  
 26 documents provided by Defendants HUGO IRAHETA, individually  
 27 and doing business as HUGO PRODUCE COMPANY (hereinafter  
 28 referred to collectively as "Defendants") in opposition

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

LOGGED

2002 JUN 18 11:57 AM  
 CLERK U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 LOS ANGELES

thereto, and it appearing to the satisfaction of the Court that this is a proper case for granting a Temporary Restraining Order and Order to Show Cause,

IT IS HEREBY ORDERED that Defendants appear in Courtroom 750 of the U.S. District Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012 on <sup>Tuesday</sup> July 2, 2002, at 3:00 p.m., or as soon thereafter as the matter may be heard, then and there to show cause, if any they have, why they, their agents, bankers, subsidiaries, successors, assignees, principals, employees, attorneys, and representatives should not be restrained and preliminarily enjoined during the pendency of this action, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging in, committing, or performing directly and indirectly, any and all of the following acts:

A. Removing, withdrawing, transferring, assigning or selling to any other person or entity, the proceeds from the sales of any or all existing or future inventories of food or other products derived from perishable (including frozen) agricultural commodities, and/or receipts of payment for products sold prior to the date of this order and/or otherwise disposing of assets, books or funds;

B. Taking any other action whatsoever which causes, has the effect of causing, or which otherwise dissipates Plaintiff's beneficiary interests in trust assets of the

LAW OFFICES  
RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953



1 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.  
2 §499e et seq.];

3 C. Taking any other action whatsoever which violates  
4 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
5 §499b(4) [§2 of PACA].

6 IT IS FURTHER ORDERED that Defendants, their owners,  
7 officers, directors, bankers, agents, subsidiaries,  
8 successors, assignees, principals, assignors, attorneys and  
9 persons acting in concert with them, appear at the same  
10 time and place to show cause, if any they have, why they  
11 should not be commanded by order of this Court and required  
12 to distribute PACA trust assets in the amount of at least  
13 \$70,566.87, which includes \$65,098.25, the cumulative  
14 amount of the PACA Trust principal owing to Plaintiff, plus  
15 \$1,963.62 in interest accrued from the dates of default for  
16 each transactions through June 13, 2002 at a rate of 10%  
17 per annum and attorneys' fees in the amount of \$3,355.00  
18 and costs of \$150.00.

19 IT IS FURTHER ORDERED that pending the hearing and  
20 determination of the foregoing Order to Show Cause,  
21 Defendants, their agents, bankers, subsidiaries,  
22 successors, assignees, principals, attorneys, and persons  
23 acting in concert with them shall be and hereby are  
24 prevented from transferring, withdrawing or in any other  
25 manner removing Perishable Agricultural Commodities Act [7  
26 U.S.C. §499e et seq.] trust assets, including funds on  
27 deposit in banking accounts held by or on behalf of  
28

LAW OFFICES  
RYNN A. JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0933

1 Defendants, from Defendants' banking accounts, including  
 2 but not limited to account number 09899-06398, at the Bank  
 3 of America, 10200 Reseda Blvd., Northridge, California  
 4 91324 from Defendants' banking accounts.

5 IT IS FURTHER ORDERED that pending the hearing and  
 6 determination of the foregoing Order to Show Cause, ~~and~~  
 7 ~~continuing thereafter~~, Defendants and their counsel,  
 8 agents, or representatives, shall be preliminarily enjoined  
 9 from engaging in, committing, or performing directly and  
 10 indirectly, any and all of the following acts:

11 D. Removing, withdrawing, transferring, assigning or  
 12 selling to any other person or entity, the proceeds from  
 13 the sales of any or all existing or future inventories of  
 14 food or other products derived from perishable agricultural  
 15 commodities, and/or receipts of payment for products or  
 16 crops sold prior to the date of this order and/or otherwise  
 17 disposing of <sup>trust</sup> assets, books or funds;

18 E. Taking any other action whatsoever which causes,  
 19 has the effect of causing, or which otherwise dissipates  
 20 Plaintiff's beneficiary interests in the trust assets;

21 F. Taking any other action whatsoever which violates  
 22 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
 23 §499b(4) [§2 of Perishable Agricultural Commodities Act  
 24 ("PACA)].

25 IT IS FURTHER ORDERED that in the event Defendants lack  
 26 sufficient funds to promptly deposit the sums described  
 27  
 28

1 above, Defendants shall be and hereby are required and  
2 ordered to:

3 G. Immediately account to the Court and Plaintiff for  
4 all assets of the PACA trust from commencement of  
5 Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' inventory of  
7 perishable agricultural commodities and produce related  
8 receivables to Plaintiff for sale and collection until  
9 Plaintiff is fully paid, and deposit and/or deliver  
10 complete accounts, records, and information of all of said  
11 receivables to Plaintiff's counsel without charge to the  
12 trust, and subject to Plaintiff's counsel making a weekly  
13 accounting for all receivables received or collected by  
14 Plaintiff's counsel in that regard. Plaintiff's counsel  
15 shall act as trustee in connection with its duties of  
16 collection of the accounts receivable and shall deposit any  
17 cash assets of the trust which are collected under this  
18 order in a trust account. In Plaintiff's sole discretion,  
19 to the extent necessary to prevent loss of Defendant's  
20 inventory of perishable agricultural commodities through  
21 decay, over-ripening, spoliation or improper storage or  
22 handling; Plaintiff may immediately take possession of any  
23 such inventory and sell such inventory through a PACA  
24 licensed broker. The proceeds of any such sales shall be  
25 held in trust by Plaintiff's counsel pending further order  
26 of this court. Any broker retained by Plaintiff or  
27 Plaintiff's counsel to effectuate such sales may retain a  
28

LAW OFFICES  
RYAN A. JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 brokerage commission in an amount reasonable and customary  
 2 in the produce industry. The U.S. Marshal shall  
 3 immediately assist Plaintiff in any manner reasonably  
 4 necessary to accomplish the sales that are the subject of  
 5 this agreement.

6 I. Endorse any checks made, endorsed or paid, to  
 7 Defendants which are trust assets and which are in their  
 8 possession or obtainable by Defendants at the time of the  
 9 entry of this Order, or which Defendants obtain or which  
 10 become obtainable by Defendants after the entry of this  
 11 Order, including but not limited to checks representing  
 12 payment for sales of inventory, and shall deliver said  
 13 assets within 48 hours of Defendants' receipt of them to  
 14 Plaintiff's counsel as set forth above. Likewise,  
 15 Defendants shall deliver any cash assets of the PACA trust  
 16 which are in its possession or are obtainable by Defendants  
 17 at the time of the entry of this order, or which Defendants  
 18 obtain or which become obtainable by Defendants after entry  
 19 of this Order, within 48 hours of Defendants' receipt of  
 20 them to Plaintiff's counsel.

21 J. File ~~weekly~~ *at the time of the hearing* with this Court <sup>✓</sup> satisfactory evidence  
 22 of compliance with the terms of this Order.

23 IT IS FURTHER ORDERED that pending the hearing and  
 24 determination of the foregoing Order to Show Cause, ~~and~~  
 25 ~~continuing thereafter~~, Plaintiff and their counsel, agents,  
 26 or representatives, shall have full and complete and  
 27 continuing access to all of Defendants' books and records,  
 28

1 which shall include but not necessarily be limited to,  
 2 Defendants' accounts receivable and payable ledgers,  
 3 invoices, ledgers, computer runs, bank statements and  
 4 canceled checks, relating to Defendants' business and  
 5 personal financial status from commencement of Defendants'  
 6 business activities forward for the purpose of verifying  
 7 Defendants' accountings required by this Order and for  
 8 enforcement of this Order. Defendants shall, upon 48 hours  
 9 notice by Plaintiff's counsel, allow inspection and copying  
 10 of the books and records of said Defendants by Plaintiff or  
 11 its representatives at Defendants' place of business.

12 IT IS FURTHER ORDERED that pending the hearing and  
 13 determination of the foregoing Order to Show Cause, ~~and~~  
 14 ~~continuing thereafter~~, Plaintiff shall be entitled to  
 15 depose, under oath, at reasonable times and places, upon at  
 16 least 48 hours notice, Defendants and/or Defendants' other  
 17 principals, owners, directors, officers, shareholders,  
 18 employees, agents and accountants concerning any matter  
 19 pertaining to any accounting due pursuant to this Order,  
 20 any books or records which Plaintiff are entitled to  
 21 inspect under this Order, the trust assets or any of  
 22 Defendants' business assets, and/or Defendants' business  
 23 practices, procedures or operations from commencement of  
 24 Defendants' business activities.

25 IT IS FURTHER ORDERED that Plaintiff shall serve  
 26 Defendants with copies of this Order and all pleadings and  
 27 other papers in support of the Order on or before  
 28

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2811  
 FAX (949) 752-0823



Jun-18-2002 02:36pm From

213C845528

P 0087008 1-108

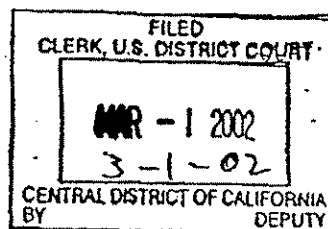
1 June 19, 2002 <sup>by 5 p.m.</sup> Defendants shall file an Opposition, if  
 2 any, to the Order to Show Cause on or before ~~June 19, 2002~~ <sup>5 p.m.</sup> on  
 3 June 27, 2002 and shall personally serve Plaintiff's  
 4 counsel with a copy of said opposition by the same  
 5 deadline. Plaintiff shall file and serve on Defendant a  
 6 Reply to Defendants' Opposition on or before \_\_\_\_\_ m. on  
 7 \_\_\_\_\_.

8 IT IS FURTHER ORDERED that no bond shall be required to  
 9 be posted by Plaintiff before the Temporary Restraining  
 10 Order is effective.

DATED: June 18, 2002Florence M. Navarro  
U.S. DISTRICT COURT JUDGE

RYAN & JANOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

LODGED



R. JASON READ, SBN 117561  
MINDY L. JAMES, SBN 197226  
RYNN & JANOWSKY  
4100 Newport Place Drive, Suite 700  
Newport Beach, CA 92660  
Telephone: (949) 752-2911  
Facsimile: (949) 752-0953

Attorneys for Plaintiff  
MEYER TOMATOES, LLC

## UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MEYER TOMATOES, LLC, a  
limited liability company,

Plaintiff,

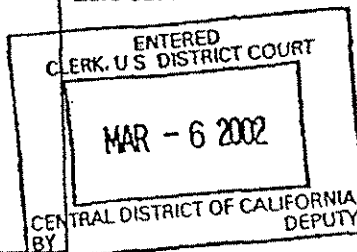
v.

FNT PRODUCE CO., INC., a  
corporation; FRANK P.  
AGUIRRE, an individual;  
AMANDA AGUIRRE, an  
individual,

Defendants.

CASE NO.

02-01789  
[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION AND  
PROPOSED PRELIMINARY  
INJUNCTION



Priority  
Send  
Enter  
Closed  
JS-5/JS-6  
JS-2/JS-3  
Scan Only

Upon review of the Complaint of Plaintiff MEYER TOMATOES, LLC ("Meyer" or "Plaintiff"), on file in the above-captioned action, and the declarations, exhibits and Memorandum of Points and Authorities in support of Plaintiff's Motion for a Temporary Restraining Order and/or Preliminary Injunction submitted therewith, and any and all documents provided by Defendants FNT PRODUCE CO., INC., FRANK P. AGUIRRE, and AMANDA AGUIRRE (hereinafter referred

Docketed

Copies / NTC Sent

JS-5/JS-6

JS-2/JS-3

RYNN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 to collectively as "Defendants" ) in opposition thereto,  
 2 and it appearing to the satisfaction of the Court that this  
 3 is a proper case for granting a Temporary Restraining Order  
 4 and Order to Show Cause,

5 IT IS HEREBY ORDERED that Defendants appear in  
 6 Courtroom 880 of the U.S. District Court for the Central  
 7 District of California, 255 E. Temple St., Los Angeles,  
 8 California 90012 on March 14, 2002, at 1:30 p.m.,  
 9 or as soon thereafter as the matter may be heard, then and  
 10 there to show cause, if any they have, why they, their  
 11 agents, bankers, subsidiaries, successors, assignees,  
 12 principals, employees, attorneys, and representatives  
 13 should not be restrained and preliminarily enjoined during  
 14 the pendency of this action, pursuant to Rule 65 of the  
 15 Federal Rules of Civil Procedure, from engaging in,  
 16 committing, or performing directly and indirectly, any and  
 17 all of the following acts:

18 A. Removing, withdrawing, transferring, assigning or  
 19 selling to any other person or entity, the proceeds from  
 20 the sales of any or all existing or future inventories of  
 21 food or other products derived from perishable (including  
 22 frozen) agricultural commodities, and/or receipts of  
 23 payment for products sold prior to the date of this order  
 24 and/or otherwise disposing of assets, books or funds;

25 B. Taking any other action whatsoever which causes,  
 26 has the effect of causing, or which otherwise dissipates  
 27 Plaintiff's beneficiary interests in trust assets of the  
 28

RYAN S. JAKOWIAK  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953

1 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.  
2 §499e et seq.];

3 C. Taking any other action whatsoever which violates  
4 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
5 §499b(4) [§2 of PACA].

6 IT IS FURTHER ORDERED that Defendants, their officers,  
7 directors, bankers, agents, subsidiaries, successors,  
8 assignees, principals, assignors, attorneys and persons  
9 acting in concert with them, appear at the same time and  
10 place to show cause, if any they have, why they should not  
11 be commanded by order of this Court and required to  
12 distribute PACA trust assets in the amount of at least  
13 \$51,517.65, which includes \$46,340.95, the cumulative  
14 amount of the PACA Trust principal owing to Plaintiff, plus  
15 \$1,396.70 in finance charges accrued from the dates of  
16 default for each transactions through February 28, 2002 at  
17 a rate of 18% per annum pursuant to 45 Fed.Reg. 37,872  
18 (1980) and attorneys' fees in the amount of \$3,630.00 and  
19 costs of \$150.00.

20 IT IS FURTHER ORDERED that pending the hearing and  
21 determination of the foregoing Order to Show Cause,  
22 Defendants, their agents, bankers, subsidiaries,  
23 successors, assignees, principals, attorneys, and persons  
24 acting in concert with them shall be and hereby are  
25 prevented from transferring, withdrawing or in any other  
26 manner removing Perishable Agricultural Commodities Act [7  
27 U.S.C. §499e et seq.] trust assets, including funds on  
28

RYAN A. SCHULMAN  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 782-2811  
FAX (949) 782-0983

1 deposit in banking accounts held by or on behalf of  
 2 Defendants, from Defendants' banking accounts, including  
 3 but not limited to Defendants' accounts held at Pacific  
 4 Western National Bank, located at 200 S. Vincent Ave., West  
 5 Covina, CA 91790.

6 IT IS FURTHER ORDERED that pending the hearing and  
 7 determination of the foregoing Order to Show Cause, and  
 8 continuing thereafter, Defendants and their counsel,  
 9 agents, or representatives, shall be preliminarily enjoined  
 10 from engaging in, committing, or performing directly and  
 11 indirectly, any and all of the following acts:

12 D. Removing, withdrawing, transferring, assigning or  
 13 selling to any other person or entity, the proceeds from  
 14 the sales of any or all existing or future inventories of  
 15 food or other products derived from perishable agricultural  
 16 commodities, and/or receipts of payment for products or  
 17 crops sold prior to the date of this order and/or otherwise  
 18 disposing of assets, books or funds;

19 E. Taking any other action whatsoever which causes,  
 20 has the effect of causing, or which otherwise dissipates  
 21 Plaintiff's beneficiary interests in the trust assets;

22 F. Taking any other action whatsoever which violates  
 23 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.  
 24 §499b(4) [§2 of Perishable Agricultural Commodities Act  
 25 ("PACA)].

26 IT IS FURTHER ORDERED that in the event Defendants lack  
 27 sufficient funds to promptly deposit the sums described  
 28

RYAN L. JAWORSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0953



1 above, Defendants shall be and hereby are required and  
2 ordered to:

3 G. Immediately account to the Court and Plaintiff for  
4 all assets of the PACA trust from commencement of  
5 Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' inventory of  
7 perishable agricultural commodities and produce related  
8 receivables to Plaintiff for sale and collection until  
9 Plaintiff is fully paid, and deposit and/or deliver  
10 complete accounts, records, and information of all of said  
11 receivables to Plaintiff's counsel without charge to the  
12 trust, and subject to Plaintiff's counsel making a weekly  
13 accounting for all receivables received or collected by  
14 Plaintiff's counsel in that regard. Plaintiff's counsel  
15 shall act as trustee in connection with its duties of  
16 collection of the accounts receivable and shall deposit any  
17 cash assets of the trust which are collected under this  
18 order in a trust account. In Plaintiff's sole discretion,  
19 to the extent necessary to prevent loss of Defendant's  
20 inventory of perishable agricultural commodities through  
21 decay, over-ripening, spoliation or improper storage or  
22 handling; Plaintiff may immediately take possession of any  
23 such inventory and sell such inventory through a PACA  
24 licensed broker. The proceeds of any such sales shall be  
25 held in trust by Plaintiff's counsel pending further order  
26 of this court. Any broker retained by Plaintiff or  
27 Plaintiff's counsel to effectuate such sales may retain a

28

AYRIN & JAROSWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2911  
FAX (949) 752-0953

1 brokerage commission in an amount reasonable and customary  
2 in the produce industry. The U.S. Marshal shall  
3 immediately assist Plaintiff in any manner reasonably  
4 necessary to accomplish the sales that are the subject of  
5 this agreement.

6 I. Endorse any checks made, endorsed or paid, to  
7 Defendants which are trust assets and which are in their  
8 possession or obtainable by Defendants at the time of the  
9 entry of this Order, or which Defendants obtain or which  
10 become obtainable by Defendants after the entry of this  
11 Order, including but not limited to checks representing  
12 payment for sales of inventory, and shall deliver said  
13 assets within 48 hours of Defendants' receipt of them to  
14 Plaintiff's counsel as set forth above. Likewise,  
15 Defendants shall deliver any cash assets of the PACA trust  
16 which are in its possession or are obtainable by Defendants  
17 at the time of the entry of this order, or which Defendants  
18 obtain or which become obtainable by Defendants after entry  
19 of this Order, within 48 hours of Defendants' receipt of  
20 them to Plaintiff's counsel.

21 J. File weekly with this Court satisfactory evidence  
22 of compliance with the terms of this Order.

23 IT IS FURTHER ORDERED that pending the hearing and  
24 determination of the foregoing Order to Show Cause, and  
25 continuing thereafter, Plaintiff and their counsel, agents,  
26 or representatives, shall have full and complete and  
27 continuing access to all of Defendants' books and records,  
28

ATKIN & JAROWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92860  
(949) 752-2911  
FAX (949) 752-0863

1 which shall include but not necessarily be limited to,  
2 Defendants' accounts receivable and payable ledgers,  
3 invoices, ledgers, computer runs, bank statements and  
4 canceled checks, relating to Defendants' business and  
5 personal financial status from commencement of Defendants'  
6 business activities forward for the purpose of verifying  
7 Defendants' accountings required by this Order and for  
8 enforcement of this Order. Defendants shall, upon 48 hours  
9 notice by Plaintiff's counsel, allow inspection and copying  
10 of the books and records of said Defendants by Plaintiff or  
11 its representatives at Defendants' place of business.

12 IT IS FURTHER ORDERED that pending the hearing and  
13 determination of the foregoing Order to Show Cause, and  
14 continuing thereafter, Plaintiff shall be entitled to  
15 depose, under oath, at reasonable times and places, upon at  
16 least 48 hours notice, Defendants and/or Defendants' other  
17 principals, owners, directors, officers, shareholders,  
18 employees, agents and accountants concerning any matter  
19 pertaining to any accounting due pursuant to this Order,  
20 any books or records which Plaintiff are entitled to  
21 inspect under this Order, the trust assets or any of  
22 Defendants' business assets, and/or Defendants' business  
23 practices, procedures or operations from commencement of  
24 Defendants' business activities.

25 IT IS FURTHER ORDERED that Plaintiff shall serve  
26 Defendants with copies of this Order and all pleadings and  
27 other papers in support of the Order on or before  
28

RYAN A. HANCOCK  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 782-2911  
FAX (949) 752-0863

1 March 5, 2002. Defendants shall file an Opposition, if  
 2 any, to the Order to Show Cause on or before 3:00 p.m. on  
 3 March 11, 2002. and shall personally serve Plaintiff's  
 4 counsel with a copy of said opposition by the same  
 5 deadline. Plaintiff shall file and serve on Defendant a  
 6 Reply to Defendants' Opposition on or before 3:00 p.m. on  
 7 March 13, 2002.

8 IT IS FURTHER ORDERED that no bond shall be required to  
 9 be posted by Plaintiff before the Temporary Restraining  
 10 Order is effective.

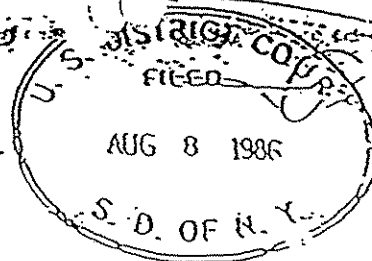
11  
 12 DICKRAN TEVRIZIAN

13 DATED: March 1, 2002

14 U.S. DISTRICT COURT JUDGE  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

LAW OFFICES  
 RYNN & JAKOWSKY  
 4100 NEWPORT PLACE DRIVE  
 SUITE 700  
 NEWPORT BEACH, CALIFORNIA 92660  
 (949) 752-2911  
 FAX (949) 752-0963

SOUTHERN DISTRICT OF NEW YORK



FINEST FRUITS, INC.,

Plaintiff,

86 Civ. 3903 (CSH)

EDWARD BOKER, INC.,  
and STERLING NATIONAL BANK, N.A.,

Defendants.

Before:

HON. CHARLES S. HAIGHT,

District Judge

New York, N. Y.  
May 30, 1986

APPEARANCES:

SURES, DONDERO and McCARRON,

Attorneys for Plaintiff

BY: STEPHEN P. McCARRON,

--and--

JOSEPH MANDELL,

of Counsel

STANLEY ISRAEL,

Attorney for Defendant

Edward Boker, Inc.

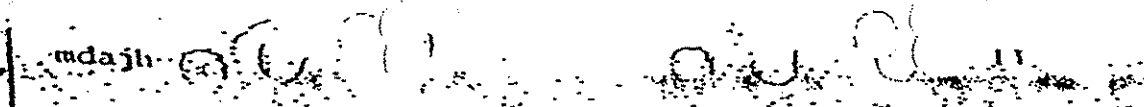
JERROLD GILBERT,

Attorney for Defendant Sterling  
National Bank, N.A.

ALSO PRESENT:

EDWARD SILVERSTEIN



mdash.   
1 set aside, because if it is not, what is going to happen  
2 is when Finest eventually gets a judgment, they are going  
3 to go to Boker in 70, 80 or 100 days, and say: Boker,  
4 here's our judgment, will you pay us the \$30,000? And  
5 Boker is going to turn around and say: I'm sorry, we  
6 don't have any money. The bank has all the money. Sterling  
7 Bank has been in here and has taken all our money.

8 That's pretty much what Mr. Israel said, that the  
9 bank is running the operation. Then we go to the bank,  
10 and the bank says: We are not a statutory trustee, we  
11 don't owe you anything, we didn't buy anything under the  
12 Act. I'm sorry, we can't pay you, either.

13 The Act is designed to assure that that does  
14 not happen, and the district courts are given specific  
15 jurisdiction in this kind of case, and all we are asking  
16 is that \$30,388 and some-odd cents be set aside. If we  
17 are already setting money aside and so sure everybody is  
18 going to be paid off, what's the big deal? Put it aside.  
19 We just want to make extra sure. We don't want to give  
20 up our rights, and want to make sure that the law is  
21 enforced.

22 All we are asking is that they put up money in an  
23 interest-bearing account, and nobody can touch it until  
24 further order of the court.

25 THE COURT: All right. I think that the time

1 exigencies indicate that I should rule on this application  
2 for preliminary injunction now, and I propose to do so  
3 from the bench. In consequence, the wording will perhaps  
4 not be as artful as perhaps I would desire, but I think  
5 it is necessary under the circumstances.

6 I will ask only that in the event an appeal  
7 is to be taken from this order, that counsel order up the  
8 transcript so that I may cure any grammatical or typo-  
9 graphical errors.

10 This is an action brought by plaintiff Finest  
11 Fruits, Inc. v. Edward Boker, Inc. and the Sterling  
12 National Bank. Subject matter jurisdiction is conferred  
13 upon this court by the Perishable Agricultural Commodities  
14 Act as amended.

15 The statute appears in 7 U.S.C., Section 499(a)  
16 and succeeding sections.

17 The motion for a preliminary injunction brought  
18 on by order to show cause was filed on May 19, 1986,  
19 but the order to show cause was signed by Judge Cannella  
20 in Part 1 on May 16, and service was directed to be made  
21 upon defendant Boker and on the bank on or before 5:00 p.m.  
22 on that day, May 16.

23 Service, in accordance with Judge Cannella's  
24 order, appears to have been made. No papers in opposition  
25 have been filed or served that I am aware of. Appearances

1 have been made this morning by counsel for Boker and for  
2 the bank..

3 A speaking motion to consolidate this action  
4 with an action commenced in White Plains has been made by  
5 counsel for the bank and for Boker. No papers have been  
6 filed in connection with a formal motion to consolidate.

7 That motion to consolidate is resisted by  
8 counsel for plaintiff Finest.

9 I do not regard the motion to consolidate as  
10 properly before me. Such applications must be made on  
11 papers with a sufficient notice to other parties to  
12 litigation to either agree or resist consolidation.

13 In this case, the plaintiff in the case before  
14 me indicates the desire to resist. In these circumstances  
15 and in this chronology, I do not regard a motion to  
16 consolidate as properly before me.

17 Surely, as indicated during the colloquy of  
18 counsel, there is no power in this court to compel a  
19 party such as Finest to enter into a stipulation which  
20 other litigants, claimants in comparable circumstances,  
21 may have agreed to join. That's for them to say. But  
22 equally, it is for the plaintiff before me, Finest Fruits,  
23 Inc., to stand clear of such a settlement, such an  
24 arrangement, and pursue whatever individual remedies may  
25 be conferred upon them by the statute to which I have referred.

1 declaration of exemption of the ordinary property

2 machinery in cases where trusts are created under this  
3 more recent statute.

4 So for all of these reasons, I regard this  
5 application as arising out of an action brought in this  
6 court under statutory authority by *Pineapple Fruits v.*  
7 *Baker and the bank*. The operative provision appears in  
8 7 U.S.C., Section 499(e)2, which provides in pertinent part  
9 "Perishable agricultural commodities received by a  
10 commissioned merchant, dealer or broker in all transactions  
11 and all inventories of food or other products derived from  
12 perishable agricultural commodities and any receivables  
13 or proceeds from the sale of such commodities or products  
14 shall be held by such commissioned merchant, dealer or  
15 broker in trust for the benefit of all unpaid suppliers  
16 or sellers of such commodities or agents involved in the  
17 transaction until full payment of the sums owing in  
18 connection with such transactions has been received by  
19 such unpaid suppliers, sellers or agents."

20 The statute is cast in mandatory terms: "Shall  
21 be held in trust."

22 I am not aware of a case that directly addresses  
23 the point, but it is not clear to me that the traditional  
24 showing to obtain the preliminary injunctive relief even  
25 applies here. We are all familiar with those criteria.

1 A preliminary showing of possible irreparable harm coupled  
2 with either a showing of likelihood of success on the  
3 merits or significant questions requiring further litigation  
4 and a balance of hardships tipping decidedly in favor of  
5 the party seeking equitable relief.  
6

7 We are all familiar with those standards that  
8 apply in the usual commercial case where a preliminary  
9 injunction is sought.

10 But here I am dealing with a statute which seeks  
11 in mandatory terms in respect of the creation of the trust.  
12 And this is a limited application for preliminary injunction.  
13 It simply asks me to direct that the trust mandated by  
14 the statute be in fact implemented and created.

15 It is a relatively narrow application for  
16 preliminary injunctive relief that the plaintiff makes, and  
17 it appears to track the statute.

18 It does not appear to be denied that the  
19 factual background asserted by the plaintiff is true. The  
20 papers indicate that those facts are present in this case,  
21 and I don't hear it suggested that the factual presentation  
22 made by the plaintiff is inaccurate in any way.

23 Surely no papers have been served to question  
24 that factual underpinning, and I do not hear counsel  
25 opposing the application suggest that the factual  
allegations are inaccurate in any way. In consequence of



scheme, the plaintiff is not required to wait to see if that happens or to assume that it is going to happen or to participate in a plan which apparently other comparable sellers have agreed to participate in, in the White Plains litigation.

It seems to me that a sufficient showing has been made in this case for the plaintiff to receive the preliminary injunctive relief that it prays for in this application, and in consequence of that I enter and make the following order:

I direct that during the pendency of this action, the defendants, Edward Boker, Inc. and Sterling National Bank, N.A. place in trust the amount of \$30,388 in an interest-bearing account, a separate account, which the Sterling National Bank may maintain in satisfaction of the trust obligations which arise under the Perishable Agricultural Commodities Act.

I should think that that would satisfy the plaintiff's present request. Do you suggest any additional language that should be included in the order?

MR. MCCARROLL: Just that the assets -- perhaps this is implied, but that nothing can be done with those assets until further order of the court. In other words, it is subject to further order.

THE COURT: Yes, I think it was implied but just

1 that we make it explicit further direct  
2 that nothing further be done with those particular trust  
3 amounts pending the further order of this court in this  
4 litigation.

5 This order delivered as I have done this morning  
6 is intended to be binding upon the defendant, Edward  
7 Boker, Inc. It is also intended to be binding upon  
8 Sterling National Bank, N.A., and it is also binding upon  
9 those entities, officers, agents, servants, employees  
10 and attorneys and upon any others in active concert or  
11 participation with them.

12 I have followed the language of Rule 65.

13 I do not require the posting of a bond by  
14 Finest in the context of this preliminary injunction.

15 Anything further I should deal with today?

16 MR. GILBERT: Your Honor, could we request  
17 a stay of this order for a period of five days?

18 THE COURT: I deny a stay in the exercise of  
19 my discretion.

20 \* \* \*